



**SPECIAL CITY COUNCIL WORKSESSION
RICHFIELD MUNICIPAL CENTER, BARTHOLOMEW ROOM
JANUARY 12, 2016
5:45 PM**

Call to order

1. 5:45 p.m. - 6:00 p.m.
Discussion regarding 66th Street construction staging (Council Memo No. 2)
2. 6:00 p.m. - 6:30 p.m.
Mayor Goettel's summary and discussion of her recent trip to China
3. 6:30 p.m. - 6:45 p.m.
Discussion regarding the Richfield band shell (Council Memo No. 3)

Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.

CITY OF RICHFIELD, MINNESOTA
Office of City Manager

January 7, 2016

Council Memorandum No. 2

The Honorable Mayor
and
Members of the City Council

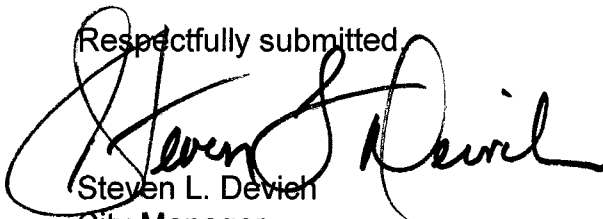
Subject: 66th Street Reconstruction Project
(Worksession Agenda Item No. 1)

Council Members:

At the January 12, 2016 City Council Worksession, Maury Hooper, Hennepin County's Project Manager, will discuss construction staging for the 66th Street Reconstruction project. Hennepin County has refined the construction staging for the project during the final design development process and staff will discuss the staging plan.

Please contact Kristin Asher, Director of Public Works, at 612-861-9795 for further discussion.

Respectfully submitted,



Steven L. Devich
City Manager

SLD:jjv

Email: Assistant City Manager
Department Directors

CITY OF RICHFIELD, MINNESOTA
Office of City Manager

January 7, 2016

Council Memorandum No. 3

The Honorable Mayor
and
Members of the City Council

Subject: Band Shell Discussion
(Worksession Agenda Item No. 3)

Council Members:

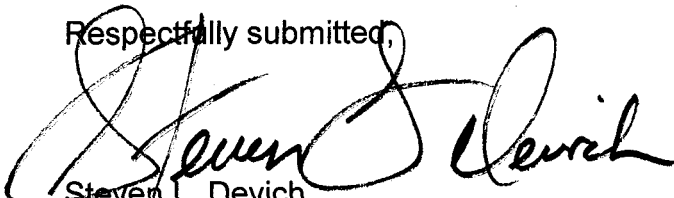
David Butler and Jim Topitzhofer have been working on a plan to move the band shell project forward. As you recall, bids received for the project last August were much higher than anticipated and subsequently rejected by Council. A few attempts were made to obtain additional funding through naming rights to no avail.

A non-profit organization, The Friends of the Richfield Band Shell, was formed for the purpose of helping the project financially. This group has successfully raised additional funds and is now ready to commit \$100,000 to the project.

To move the project forward it is also necessary to reduce construction costs to remain on budget. Three ways to reduce costs will be presented at the Council Study Session scheduled on January 12, 2016. These suggestions and other matters relating to the project are detailed in the attached letter from David Butler.

Please contact me or Jim Topitzhofer, Recreation Services Director, if you have questions.

Respectfully submitted,



Steven L. Devich
City Manager

SLD:jt
Attachment
Email: Assistant City Manager
Department Directors

To: Members of the Richfield City Council
From: David J. Butler, President of Friends of the Richfield Band Shell, Inc.
Date: December 23, 2015

In talking with Jim Topitzhofer, I am told he will present 3 recommendations for the City Council to consider at a study session on January 12 to move the project forward. As you remember, at the last bid opening, the lowest bid was \$62,000 over budget. The task now is to find a way of building the band shell within budget, which means reducing costs. I will be leaving town on January 9, 2016 and will not be able to attend the session, so am writing to give you my thoughts ahead of time. The three ways I see costs can be reduced are the following:

1. Find a site where the soils will allow for a less expensive foundation. This requires new soil borings in a new area. There is some indication there is a site, closer to the ice arena that might be on the edge of the old lake bed and may contain less organic material than is present at the current site. It's the organic material from the lake bed that is causing the need to install helical piers extremely deep to support a foundation. This new site, if chosen, would lend itself to being a good site for the band shell. In fact, it was the number 2 site in the priority standings when the Task Force was engaged in the site selection process.
2. Hire a CM instead of contracting with a general contractor (GC). It has been determined that a fee for a CM will be less than the cost of using a GC. A CM will work with the architect to come up with the best site and a design that can be built within budget and will locate subcontractors who are willing to do their share of the work within budget. The project will not be put out for bids until the CM has cost estimates from at least one subcontractor within each work area. I understand Jim has received favorable bids for services from two CMs.
3. Reduce the size of the band shell. It has been determined by our local musician advisors that the stage can be reduced in size from its current 46' width. Something in the range of 40' to 38' would be adequate. Reducing the width from 46' will result in cost savings of material and labor.

As to financing of the construction, the newly formed nonprofit, Friends of the Richfield Band Shell (Friends), has committed to provide \$100,000 to the project. It now has a commitment from one donor for the amount of \$85,000 and an agreement to guarantee a loan of \$15,000 by Friends from a local bank to make up the full \$100,000. The \$15,000 loan, if needed, will be paid off by Friends as moneys are received in the future. Friends is working with the City on this project as its fiscal sponsor. With this \$100,000 from Friends and the \$325,000 from the city and the \$75,000 donated earlier, there is \$500,000 available. Of this, \$70,000 has been spent for fees, soil borings, etc., leaving \$430,000 for the project. The task of the CM, the architect and the staff will be to find a way to get the project completed for the \$430,000.

I personally, and as President of Friends of the Richfield Band Shell, would encourage the council to authorize Jim to seek a Construction Manager and to authorize further soil borings. I feel a way can be found for building the band shell with the money that has been committed. Friends may need to raise some additional money for extras, such as sound equipment and stage lighting, which it is willing to do.

The other issue that needs to be addressed by the council is the naming of the memorial garden. Friends has obtained an offer from the Gertrude Ulrich family to provide a matching grant of \$10,000 to build the first phase of a memorial garden, near the band shell, provided the garden is named the Gertrude Ulrich Memorial Garden. Bachman's has offered to prepare a design of a garden, free of charge, provided the design work can be done during this winter season when they are not so busy. Bachman's will not commence work on the design plan until the council has given its approval. I would encourage the council to affirm this plan at its study session. Friends will commit to helping raise the additional \$10,000 for the garden.

David Butler, President of Friends of the Richfield Band Shell, Inc.
Ph. 612-798-0402
email: david.butler@q.com



**REGULAR CITY COUNCIL MEETING
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS
JANUARY 12, 2016
7:00 PM**

INTRODUCTORY PROCEEDINGS

Call to order

Open forum (15 minutes maximum)

Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Council on items not on the agenda. Individuals who wish to address the Council must have registered prior to the meeting.

Pledge of Allegiance

Approval of the minutes of the Regular City Council Meeting of December 8, 2015.

COUNCIL DISCUSSION

1. Hats Off to Hometown Hits

AGENDA APPROVAL

2. Approval of the agenda.
3. **Consent Calendar contains several separate items, which are acted upon by the City Council in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further Council action on these items is necessary. However, any Council Member may request that an item be removed from the Consent Calendar and placed on the regular agenda for Council discussion and action. All items listed on the Consent Calendar are recommended for approval.**
 - A. Consideration of the approval of a designation of an Acting City Manager for 2016.
Staff Report No. 1
 - B. Consideration of the approval of a resolution designating an official newspaper for 2016.
Staff Report No. 2
 - C. Consideration of the approval of the resolution authorizing the use of credit cards by City employees otherwise authorized to make purchases on behalf of the City.
Staff Report No. 3
 - D. Consideration of the approval of the resolutions designating official depositories for the City of Richfield for 2016, including the approval of collateral.
Staff Report No. 4
 - E. Consideration of a resolution granting site plan approval and variances to allow a fitness studio in an existing building at 6722 Penn Avenue.

Staff Report No. 5

- F. Consideration of the approval of the first reading of an ordinance to allow beekeeping in the City of Richfield.

Staff Report No. 6

- G. Consideration of the approval of the Continuing Agreement for 2016 between the Hennepin County Human Services and Public Health Department and the City of Richfield Police Department for continuing funds for a Police Cadet and/or Community Service Officer position and Joint Community Police Partnership (JCPP) training. The funds available for 2016 will be \$20,000.

Staff Report No. 7

- H. Consideration of the approval of the continuation of the agreement with the City of Bloomington for the provision of public health services for the City of Richfield for the year 2016.

Staff Report No. 8

4. Consideration of items, if any, removed from Consent Calendar

PUBLIC HEARINGS

5. Public hearing regarding the consideration of a resolution and the first reading of an ordinance regarding the granting of a cable communications franchise with CenturyLink for the City of Richfield.

Staff Report No. 9

RESOLUTIONS

6. Consideration of a resolution authorizing the implementation of Paid Parental Leave for benefit-eligible employees of the City of Richfield.

Staff Report No. 10

7. Consideration of the resolution amending the 2015-2016 labor agreement with the International Union of Operating Engineers Local 49.

Staff Report No. 11

8. Consideration of a resolution approving the contract with the Police Supervisors LELS Local 162 for the contract period January 1, 2016 through December 31, 2017 and authorize the City Manager to execute the agreement.

Staff Report No. 12

9. Consideration of a resolution approving the contract with the Police Officers and Detectives LELS Local 123 for the contract period January 1, 2016 through December 31, 2017 and authorize the City Manager to execute the agreement.

Staff Report No. 13

OTHER BUSINESS

10. Discussion regarding City Council attendance at the 2016 National League of Cities (NLC) Conferences.

Staff Report No. 14

11. Consideration of designating representatives to serve as the 2016 liaisons to various metropolitan agencies and City commissions.

Staff Report No. 15

12. Consideration of the designation of a Mayor Pro Tempore for 2016.

Staff Report No. 16

CITY MANAGER'S REPORT

13. City Manager's Report

CLAIMS AND PAYROLLS

14. Claims and payrolls

Open forum (15 minutes maximum)

Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Council on items not on the agenda. Individuals who wish to address the Council must have registered prior to the meeting.

15. Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Regular Meeting

December 8, 2015

CALL TO ORDER

The meeting was called to order by Mayor Goettel at 7:00 p.m. in the Council Chambers.

Council Members Present:

Debbie Goettel, Mayor; Edwina Garcia, Tom Fitzhenry; Pat Elliott; and Michael Howard.

Staff Present:

Steven L. Devich, City Manager; John Stark, Community Development Director; Jay Henthorne, Public Safety Director/Police Chief; Jim Topitzhofer, Recreation Services Director; Kristin Asher, Public Works Director; Pam Dmytrenko, Assistant City Manager/HR Manager; Chris Regis, Finance Manager; Jeff Pearson, City Engineer; Mary Tietjen, City Attorney; and Cheryl Krumholz, Executive Coordinator.

OPEN FORUM

The following individuals expressed their concerns regarding the lack of Section 8 and Group Residential Housing resulting from the renovations and transition at Crossroads at Penn to Concierge Apartments:

Quaintance Clark, 7720 Penn Avenue, #30
Donna Goodwin, 7720 Penn Avenue #C126
Linda Lee Soderstrom, 7720 Penn Avenue, #C322
Sue Watlov Phillips, Executive Director, MICAH
Eric Herge, HOME Line
Melissa Melnick, 7525 Oliver Avenue

City Manager Devich explained that through the City's efforts, Concierge has made several concessions regarding the changeover at Crossroads.

Community Development Director Stark stated that the Concierge owners would take ownership of the resource event inviting social service providers and housing advocates and the City would provide assistance. He provided an update on the outcome of discussions with the owners regarding accepting Section 8, GRH, and income-based requirements for tenants.

City Attorney Tietjen explained there are federal regulations and the City does not have legal authority to force property owners to accept Section 8.

City Manager Devich further explained that when a project does not include using public funds, the City has no authority because it is a private transaction.

PLEDGE OF ALLEGIANCE

Mayor Goettel led the audience in the Pledge of Allegiance.

APPROVAL OF MINUTES

M/Garcia, S/Howard to approve the minutes of the (1) Special City Council Worksession of November 24, 2015; (2) Regular City Council Meeting of November 24, 2015; and (2) Special City Council Meeting of December 1, 2015.

Motion carried 5-0.

Item #1	RICHFIELD FOUNDATION AWARDING OF GRANTS
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Richfield Foundation representatives presented the grants.

Item #2	PRESENTATION BY VFW REPRESENTATIVES OF PATRIOT'S PENN AWARD
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VFW representatives presented the awards.

Item #3	COUNCIL DISCUSSION <ul style="list-style-type: none">• Schedule City advisory commission interviews• Schedule annual City Council and staff goalsetting session• Schedule meeting with local legislators• Hats Off to Hometown Hits
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The City Council consensus was to schedule the following:

- City advisory commission interviews – Saturday, January 16, 2016
- Annual City Council and staff goalsetting session – Thursday evening, March 3, 2016
- Meeting with local legislators – Thursday morning, February 11, 2016

Item #4	COUNCIL APPROVAL OF AGENDA
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M/Elliott, S/Howard to approve the agenda.

Motion carried 5-0.

Item #5	CONSENT CALENDAR
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- A. Consideration of the approval of a resolution allowing the acceptance of monetary donations received by the Police Department in support of Safety Day, Nite to Unite, Heroes and Helpers and the Bullet Proof Vest fund. S.R. No. 194

RESOLUTION NO. 11143

RESOLUTION AUTHORIZING RICHFIELD PUBLIC SAFETY/POLICE DEPARTMENT
TO ACCEPT DONATIONS FROM THE LISTED AGENCIES, BUSINESSES AND
PRIVATE INDIVIDUALS FOR DESIGNATED USES

This resolution appears as Resolution No. 11143.

- B. Consideration of the approval of the purchase of four 2016 Ford Police Interceptor vehicles for Public Safety from Nelson Auto Center for \$111,707.80, plus tax, title, and license fees. S.R. No. 195
- C. Consideration of the approval of a resolution regarding site plan approval and variances to allow the partial demolition of an existing building and construction of an accessory parking lot at 6232 Lyndale Avenue. S.R. No. 196

RESOLUTION NO. 11144

RESOLUTION GRANTING APPROVAL OF A SITE PLAN AND VARIANCES
AT 6232 LYNDAL AVENUE

This resolution appears as Resolution No. 11144.

- D. Consideration of the approval of a resolution authorizing acceptance of a grant for \$4,000 to the City of Richfield from the Statewide Health Improvement Program Grant (administered by Bloomington Public Health) for funding of a Bike Rack Cost Share Program. S.R. No. 197

RESOLUTION NO. 11145

RESOLUTION AUTHORIZING ACCEPTANCE OF GRANTS RECEIVED BY THE CITY
OF RICHFIELD-COMMUNITY DEVELOPMENT DEPARTMENT AND TO AUTHORIZE
THE CITY TO ADMINISTER THE FUNDS IN ACCORDANCE WITH GRANT
AGREEMENTS AND TERMS PRESCRIBED BY DONORS

This resolution appears as Resolution No. 11145.

- E. Consideration of the approval of a resolution appointing Raj Bhakta, Adam Selby, and Katie Haunz to the Richfield Tourism Promotion Board to each serve a three-year term ending December 31, 2018 or until a successor has been chosen, whichever is later. S.R. No. 198

RESOLUTION NO. 11146

RESOLUTION APPOINTING REPRESENTATIVES TO THE BOARD OF DIRECTORS
OF THE RICHFIELD TOURISM PROMOTION BOARD, INC.

This resolution appears as Resolution No. 11146.

- F. Consideration of the approval of the renewal of the 2016 licenses for On-Sale 3.2 Percent Malt Liquor, Off-Sale 3.2 Percent Malt Liquor and taxi companies doing business in Richfield. S.R. No. 199

Licenses to Operate in Richfield

Gold Star Taxi - 27 vehicles
10-10 Taxi - 10 vehicles
Airport Taxi - 6 vehicles

Licenses to sell 3.2 Percent Malt Liquor

Portland Food Mart - Off-Sale
Rainbow Foods - Off-Sale
Richfield Minnoco (Gas station 67th & Penn) -
Off-Sale
Short Stop Supperette - Off-Sale
SuperAmerica #4186 - Off-Sale
SuperAmerica #4188 - Off-Sale
SuperAmerica #4191 - Off-Sale

SuperAmerica #4615 - Off-Sale
Target Corporation - Off-Sale
Sandy's Tavern - On-Sale
Vina Restaurant - On-Sale

M/Goettel, S/Fitzhenry to approve the Consent Calendar.

Motion carried 5-0.

Item #6	CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM THE CONSENT CALENDAR
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None.

Items #7 & 8	PUBLIC HEARINGS REGARDING THE 2016 PAWNBROKER AND SECONDHAND GOODS DEALER LICENSE RENEWALS: 7. METRO PAWN & GUN, INC., 7529 LYNDAL AVE S.R. NO. 200 8. UNIVERSITY CASH COMPANY, INC., D/B/A AVI'S PAWN AND JEWELRY, 6414 NICOLLET AVENUE S.R. NO. 201
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Mayor Goettel presented Staff Report Nos. 200 and 201.

Mark Nichols, Metro Pawn, was available to answer questions.

M/Goettel, S/Fitzhenry to close public hearing.

Motion carried 5-0.

M/Goettel, S/Fitzhenry to approve the renewal of the following 2016 Pawnbroker and Secondhand Goods Dealer Licenses:

- Metro Pawn & Gun, Inc., 7529 Lyndale Avenue;
- University Cash Company, LLC d/b/a Avi's Pawn and Jewelry, 6414 Nicollet Avenue.

Motion carried 5-0.

Items #9 & 10	PUBLIC HEARINGS REGARDING THE 2016 CLUB ON-SALE INTOXICATING AND SUNDAY LIQUOR LICENSE RENEWALS: 9. FRED BABCOCK V.F.W. POST NO. 5555, INC. D/B/A FOUR NICKELS FOOD & DRINK; 6715 LAKE SHORE DRIVE S.R. NO. 202 10. MINNEAPOLIS-RICHFIELD AMERICAN LEGION POST 435, 6501 PORTLAND AVENUE S.R. NO. 203
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Council Member Garcia presented Staff Reports Nos. 202 and 203.

M/Goettel, S/Howard to close public hearing.

Motion carried 5-0.

M/Garcia, S/Fitzhenry to approve the renewal of the following 2016 club on-sale intoxicating and Sunday liquor licenses:

- Fred Babcock V.F.W. Post No. 5555 d/b/a Four Nickels Food and Drink, 6715 Lakeshore Drive;
- Minneapolis-Richfield American Legion Post 435, 6501 Portland Avenue.

Motion carried 5-0.

Items #11-18	<p>PUBLIC HEARINGS REGARDING 2016 ON-SALE WINE AND 3.2 PERCENT MALT LIQUOR LICENSE RENEWALS:</p> <ol style="list-style-type: none"> 11. CHIPOTLE MEXICAN GRILL OF COLORADO, LLC, D/B/A CHIPOTLE MEXICAN GRILL, 7644 LYNDAL AVE S.R. NO. 204 12. PATRICK'S FRENCH BAKERY, INC., D/B/A PATRICK'S BAKERY & CAFÉ, 2928 WEST 66TH STREET S.R. NO. 205 13. JOY'S PATTAYA THAI RESTAURANT, LLC, D/B/A JOY'S PATTAYA THAI RESTAURANT, 7545 LYNDAL AVE S.R. NO. 206 14. THE NOODLE SHOP CO.-COLORADO, INC., D/B/A NOODLES & COMPANY, 1732 EAST 66TH STREET S.R. NO. 207 15. THE NOODLE SHOP CO.-COLORADO, INC., D/B/A NOODLES & COMPANY, 7630 LYNDAL AVE S.R. NO. 208 16. HENRY THOU, D/B/A RED PEPPER CHINESE RESTAURANT, 2910 66TH STREET WEST S.R. NO. 209 17. DAVANNI'S INC., D/B/A DAVANNI'S PIZZA AND HOT HOAGIES, 6345 PENN AVENUE SOUTH S.R. NO. 210 18. MY BURGER OPERATIONS, LLC D/B/A MY BURGER, 6555 LYNDAL AVE SOUTH S.R. NO. 211
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Council Member Elliott presented Staff Report Nos. 204 through 211.

M/Elliott, S/Goettel to close the public hearing.

Motion carried 5-0.

M/Elliott, S/Howard to approve the renewal of the following 2016 on-sale wine and 3.2 percent malt liquor licenses:

- Chipotle Mexican Grill of Colorado, LLC, d/b/a Chipotle Mexican Grill, 7644 Lyndale Avenue;
- Patrick's French Bakery, Inc., d/b/a Patrick's Bakery & Café, 2928 West 66th Street;
- Joy's Pattaya Thai Restaurant, LLC, d/b/a Joy's Pattaya Thai Restaurant, 7545 Lyndale Avenue;
- The Noodle Shop Co.-Colorado, Inc., d/b/a Noodles & Company, 1732 East 66th Street;
- The Noodle Shop Co.-Colorado, Inc., d/b/a Noodles & Company, 7630 Lyndale Avenue ;
- Henry Thou, d/b/a Red Pepper Chinese Restaurant, 2910 66th Street West;
- Davanni's Inc., d/b/a Davanni's Pizza and Hot Hoagies, 6345 Penn Avenue South;
- My Burger Operations, LLC d/b/a My Burger, 6555 Lyndale Avenue South.

Motion carried 5-0.

Items #19-28	<p>PUBLIC HEARINGS REGARDING 2016 ON-SALE INTOXICATING AND SUNDAY LIQUOR LICENSE RENEWALS:</p> <ol style="list-style-type: none"> 19. FRENCHMAN'S PUB, INC. D/B/A FRENCHMAN'S, WITH OPTIONAL 2 A.M. CLOSING, 1400 EAST 66TH STREET S.R. NO. 212 20. THOMPSON'S FIRESIDE PIZZA, INC. D/B/A FIRESIDE FOUNDRY, WITH OUTSIDE SERVICE, 6736 PENN AVENUE SOUTH S.R. NO. 213 21. PAISAN INCORPORATED, D/B/A KHAN'S MONGOLIAN BARBEQUE,
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	<p>500 EAST 78TH STREET S.R. NO. 214</p> <p>22. PIZZA LUCE VII, INC. D/B/A PIZZA LUCE, WITH OUTSIDE SERVICE AND WITH OPTIONAL 2 A.M. CLOSING, 800 66TH STREET WEST S.R. NO. 215</p> <p>23. LAST CALL OPERATING CO. II, D/B/A CHAMPPS AMERICANA, WITH OPTIONAL 2 A.M. CLOSING AND OUTSIDE SERVICE, 790 WEST 66TH STREET S.R. NO. 216</p> <p>24. GM RICHFIELD, LLC D/B/A FOUR POINTS BY SHERATON MINNEAPOLIS AIRPORT, 7745 LYNDALE AVENUE SOUTH S.R. NO. 217</p> <p>25. WILTSHIRE RESTAURANTS, LLC D/B/A HOULIHAN'S RESTAURANT & BAR, WITH OUTSIDE SERVICE, 6601 LYNDALE AVENUE SOUTH S.R. NO. 218</p> <p>26. EL TEJABAN MEXICAN RESTAURANT, LLC D/B/A EL TEJABAN MEXICAN GRILL WITH OPTIONAL 2 A.M. CLOSING, 6519 LYNDALE AVENUE SOUTH S.R. NO. 219</p> <p>27. DON PABLO'S OPERATIONS, LLC D/B/A DON PABLO'S, 980 78TH STREET WEST S.R. NO. 220</p> <p>28. LYN 65, LLC D/B/A LYN 65 KITCHEN & BAR, 6439 LYNDALE AVENUE SOUTH S.R. NO. 221</p>
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Council Member Howard presented Staff Report Nos. 212 through 221.

M/Goettel, S/Howard to close the public hearing.

Motion carried 5-0.

M/Howard, S/Goettel to approve the renewal of the following 2016 on-sale intoxicating and Sunday liquor licenses:

- Frenchman's Pub, Inc. d/b/a Frenchman's, with optional 2 a.m. closing, 1400 East 66th Street;
- Thompson's Fireside Pizza, Inc. d/b/a Fireside Foundry, with outside service, 6736 Penn Avenue South;
- Paisan Incorporated, d/b/a Khan's Mongolian Barbeque, 500 East 78th Street;
- Pizza Luce VII, Inc. d/b/a Pizza Luce, with outside service and with optional 2 a.m. closing, 800 66th Street West;
- Last Call Operating Co. II, d/b/a Champps Americana, with optional 2 a.m. closing and outside service, 790 West 66th Street;
- GM Richfield, LLC d/b/a Four Points by Sheraton Minneapolis Airport, 7745 Lyndale Avenue South;
- Wiltshire Restaurants, LLC d/b/a Houlihan's Restaurant & Bar, with outside service, 6601 Lyndale Avenue South;
- El Tejaban Mexican Restaurant, LLC d/b/a El Tejaban Mexican Grill with optional 2 a.m. closing, 6519 Lyndale Avenue South;
- Don Pablo's Operations, LLC d/b/a Don Pablo's, 980 78th Street West;
- Lyn 65, LLC d/b/a Lyn 65 Kitchen & Bar, 6439 Lyndale Avenue South.

Motion carried 5-0.

Item #29	<p>PUBLIC HEARING REGARDING AN APPLICATION FOR A NOISE ORDINANCE VARIANCE TO THE METROPOLITAN COUNCIL TO ALLOW OPERATION OF TEMPORARY CONVEYANCE SYSTEMS AND CURED IN-PLAICE PIPE (CIPP) LINER CURING EQUIPMENT DURING OVERNIGHT HOURS RELATED TO THE 66TH STREET RECONSTRUCTION PROJECT S.R. NO. 222</p>
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Mayor Goettel presented Staff Report No. 222.

City Engineer Pearson provided a summary of the sewer rehabilitation work.

Jeff Schwarz, Metropolitan Council, also discussed the project.

M/Goettel, S/Fitzhenry to close the public hearing.

Motion carried. 5-0.

M/Goettel, S/Fitzhenry to approve an application for a noise ordinance variance to the Metropolitan Council to allow operation of temporary conveyance systems and cured in-place pipe (CIPP) liner curing equipment during overnight hours related to the 66th Street Reconstruction Project.

Motion carried 5-0.

Item #30	CONSIDERATION OF THE SECOND READING OF AN ORDINANCE CREATING A NEW CITY CODE SECTION REQUIRING PERMITS FOR MOTION PICTURE AND COMMERCIAL PHOTOGRAPHY EVENTS AND ADOPTING A RESOLUTION APPROVING SUMMARY PUBLICATION OF THE ORDINANCE S.R. NO. 223
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Council Member Elliott presented Staff Report No. 223.

M/Elliott, S/Fitzhenry that this constitutes the second reading of Bill No. 2015-16, amending the Richfield City Code by creating a new City Code Section 1197 requiring permits for motion picture and commercial photography events, that it be published in the official newspaper, and that it be made part of these minutes, and that the following resolution be adopted and that it be made part of these minutes:

RESOLUTION NO. 11147

RESOLUTION APPROVING SUMMARY PUBLICATION OF
AN ORDINANCE ADOPTING A NEW SECTION 1197 REQUIRING PERMITS FOR
MOTION PICTURE AND COMMERCIAL PHOTOGRAPHY EVENTS

Motion carried 5-0. This resolution appears as Resolution No. 11147.

Item #31	CONSIDERATION OF THE SECOND READING OF AN ORDINANCE AMENDING SECTION 305 OF THE CITY CODE TO CODIFY REQUIREMENTS PERTAINING TO CITY COMMISSIONS, THE ADOPTION OF A RESOLUTION APPROVING SUMMARY PUBLICATION OF THE ORDINANCE AND THE ADOPTION OF A RESOLUTION REPEALING RESOLUTIONS 7718, 7983, 8344, 8142, 8933, 9282 AND DIRECTING CITY COMMISSIONS TO AMEND THEIR RESPECTIVE BYLAWS TO BE IN COMPLIANCE WITH THE NEW CITY CODE REQUIREMENTS S.R. NO. 224
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Council Member Howard presented Staff Report No. 224. He stated he was going to make a motion to table this item to allow more time to review feedback from the commissions.

Mayor Goettel requested language to guide and uniformly address attendance and the removal process and that it not be included in the City Code.

Council Member Elliott stated that he believed there was consensus in the feedback that was received regarding attendance. He added the Council liaison to the commission could bring an attendance issue before the City Council.

Council Member Fitzhenry agreed with Council Member Elliott. He added tonight was approving the City Code and a policy addressing attendance and removal could be presented to the City Council later.

Council Member Howard stated the proposed City Code amendments do reflect the issues facing commissions.

M/Howard, S/Fitzhenry that this constitutes the second reading of Bill No. 2015-17, amending Section 305 of the City Code to codify requirements pertaining to city commissions, that it be published in the official newspaper, and that it be made part of these minutes, and directing city commissions to amend their respective bylaws to be in compliance with the new city code requirements and that the following resolutions be adopted and that they be made part of these minutes:

RESOLUTION NO. 11148

RESOLUTION APPROVING SUMMARY PUBLICATION OF
AN ORDINANCE AMENDING SECTION 305 OF THE CITY CODE CODIFYING
REQUIREMENTS PERTAINING TO CITY COMMISSIONS

This resolution appears as Resolution No. 11148.

RESOLUTION NO. 11149

RESOLUTION REPEALING CERTAIN RESOLUTIONS RELATING
TO THE TERMS, RESIDENCY REQUIREMENTS AND YOUTH
APPOINTMENTS FOR CITY COMMISSIONS AND REPEALING THE
RESOLUTION ESTABLISHING A CITY CELEBRATIONS COMMISSION

This resolution appears as Resolution No. 11149.

Motion carried 5-0.

Item #32	CONSIDERATION OF THE SECOND READING OF AN ORDINANCE AUTHORIZING THE CONVEYANCE OF PROPERTY OWNED BY THE CITY OF RICHFIELD TO THE RICHFIELD HRA S.R. NO. 225
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Council Member Fitzhenry presented Staff Report No. 225.

Community Development Director Stark explained the background related to the conveyance.

M/Fitzhenry, S/Howard to Fitzhenry that this constitutes the second reading of Bill No. 2015-18, Transitory Ordinance No. 19.00, amending the Richfield City Code by authorizing the conveyance of property owned by the City of Richfield to the Richfield Housing and Redevelopment Authority, that it be published in the official newspaper, and that it be made part of these minutes.

Motion carried 5-0.

Item #33	CONSIDERATION OF A RIGHT-OF-WAY AGREEMENT WITH HENNEPIN COUNTY FOR THE 66TH STREET RECONSTRUCTION PROJECT S.R. NO. 226
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Council Member Garcia presented Staff Report No. 226.

M/Garcia, S/Fitzhenry to approve a right-of-way agreement with Hennepin County for the 66th Street Reconstruction Project.

Motion carried 5-0.

Item #34	CONSIDERATION OF THE ADOPTION OF RESOLUTION SUPPORTING AN ADDITIONAL MEDIAN DESIGN FOR 66TH STREET AT JAMES AVENUE S.R. NO. 227
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Council Member Fitzhenry presented Staff Report No. 227.

City Engineer Pearson explained the median design to enhance the crossing for Monroe Park.

M/Fitzhenry, S/Howard that the following resolution be adopted and that it be made part of these minutes:

RESOLUTION NO. 11150

RESOLUTION SUPPORTING HENNEPIN COUNTY TO INCLUDE A FULL MEDIAN WITH AN ENHANCED PEDESTRIAN CROSSING AT JAMES AVENUE FOR THE DESIGN OF COUNTY STATE AID HIGHWAY (CSAH) 53
HENNEPIN COUNTY PROJECT NO. 1011

Motion carried 5-0. This resolution appears as Resolution No. 11150.

Item #35	CONSIDERATION OF THE RESOLUTIONS APPROVING THE 2015 REVISED/2016 PROPOSED BUDGET AND TAX LEVY AND RELATED RESOLUTIONS S.R. NO. 228
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Mayor Goettel presented Staff Report No. 228.

City Manager Devich explained the Truth in Taxation (TNT) notices received from Hennepin County do not include the impact of the two passed Richfield School District referendum levies. The notices, prepared before the results of the referenda were known, do indicate the school taxes may increase based on the outcome of the referenda.

M/Goettel, S/Howard that the following resolutions be adopted and that they be made part of these minutes:

RESOLUTION NO. 11151

RESOLUTION ADOPTING A PROPOSED BUDGET AND TAX LEVY
FOR THE YEAR 2016

This resolution appears as Resolution No. 11151.

RESOLUTION NO. 11152

RESOLUTION AUTHORIZING BUDGET REVISIONS

This resolution appears as Resolution No. 11152.

RESOLUTION NO. 11153

RESOLUTION AUTHORIZING REVISION OF 2015 BUDGET OF VARIOUS
DEPARTMENTS

This resolution appears as Resolution No. 11153.

RESOLUTION NO. 11154

RESOLUTION AUTHORIZING ADJUSTMENT TO CITY'S MILEAGE
REIMBURSEMENT RATE TO CONFORM TO INTERNAL REVENUE SERVICE
STATUTORY MILEAGE REIMBURSEMENT RATE

This resolution appears as Resolution No. 11154.

RESOLUTION NO. 11155

RESOLUTION ADOPTING THE 2016 CAPITAL IMPROVEMENT BUDGET

This resolution appears as Resolution No. 11155.

RESOLUTION NO. 11156

RESOLUTION ADOPTING THE 2017-2020 CAPITAL IMPROVEMENT PROGRAM

This resolution appears as Resolution No. 11156.

RESOLUTION NO. 11157

RESOLUTION RELATING TO PURCHASING PRACTICES IN THE CITY OF
RICHFIELD AMENDING RESOLUTION NO. 11023

This resolution appears as Resolution No. 11157.

RESOLUTION NO. 11158

RESOLUTION ESTABLISHING WASTEWATER SERVICE RATES AND CHARGES,
WATER RATES AND CHARGES, SPECIAL WATER SERVICE CHARGES, STORM
SEWER RATES AND CHARGES, STREET LIGHT RATES AND CHARGES, AND 6.5%
PENALTY ON PAST DUE ACCOUNTS

This resolution appears as Resolution No. 11158.

RESOLUTION NO. 11159

RESOLUTION ESTABLISHING A PUBLIC WORKS ON-CALL COMPENSATION
POLICY

This resolution appears as Resolution No. 11159.

RESOLUTION NO. 11160

RESOLUTION APPROVING THE PUBLIC PURPOSE EXPENDITURES POLICY
FOR FISCAL YEAR 2016

This resolution appears as Resolution No. 11160.

RESOLUTION NO. 11161

RESOLUTION REESTABLISHING A CAR ALLOWANCE REIMBURSEMENT POLICY

This resolution appears as Resolution No. 11161.

RESOLUTION NO. 11162

RESOLUTION RELATING TO THE 2016 GENERAL SERVICES
SALARY COMPENSATION PLAN

This resolution appears as Resolution No. 11162.

RESOLUTION NO. 11163

RESOLUTION RELATING TO THE 2016 MANAGEMENT
SALARY COMPENSATION PLAN

This resolution appears as Resolution No. 11163.

RESOLUTION NO. 11164

RESOLUTION RELATING TO THE 2016 SPECIALIZED PAY PLAN

This resolution appears as Resolution No. 11164.

RESOLUTION NO. 11165

RESOLUTION ESTABLISHING 2016 LICENSE, PERMIT AND MISCELLANEOUS FEES
PURSUANT TO THE PROVISIONS OF APPENDIX D OF THE ORDINANCE CODE OF
THE CITY OF RICHFIELD RESCINDING RESOLUTION NO. 11031

This resolution appears as Resolution No. 11165.

Motion carried 5-0.

Item #36	CITY MANAGER'S REPORT
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Assistant City Manager/HR Manager Dmytrenko provided an update on the Paid Parental Leave Policy effective in January 2016.

City Manager Devich discussed the possible renovation of the Cedar and Penn Avenue Municipal Liquor Stores.

Item #37	CLAIMS AND PAYROLLS
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M/Fitzhenry, S/Howard that the following claims and payrolls be approved:

U.S. Bank		12/08/15
A/P Checks: 245962-246243	\$	873,835.70
Payroll: 115130-115453 42444-42445	\$	553,343.93
TOTAL	\$	1,427,170.63

Motion carried 5-0.

OPEN FORUM

None.

Item #38	ADJOURNMENT
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The City Council Meeting was adjourned by unanimous consent at 9:23 p.m.

Date Approved: January 12, 2015

Debbie Goettel
Mayor

Cheryl Krumholz
Executive Coordinator

Steven L. Devich
City Manager



STAFF REPORT NO. 1
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Theresa Schyma, Deputy City Clerk

DEPARTMENT DIRECTOR REVIEW: N/A

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich
12/30/2015

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the approval of a designation of an Acting City Manager for 2016.

EXECUTIVE SUMMARY:

It is necessary to designate a person to serve as the Acting City Manager for those times when the City Manager is absent from the City. In 2015, the City Manager designated the Assistant City Manager or an available Department Director as Acting City Manager.

RECOMMENDED ACTION:

By Motion: Direct the City Manager to designate the Assistant City Manager or an available Department Director as Acting City Manager for 2016 in the event the City Manager is absent from the City.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

This information is contained in the Executive Summary.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- Past practice has been for the City Council to designate an Acting City Manager for times when the City Manager is absent from the City.
- This designation should be made at the first meeting in January of each year.

C. CRITICAL TIMING ISSUES:

It is necessary to designate a person to serve as Acting City Manager to ensure continuation of City operations during an absence of the City Manager.

D. FINANCIAL IMPACT:

This designation is at no additional cost to the City.

E. LEGAL CONSIDERATION:

None.

ALTERNATIVE RECOMMENDATION(S):

The City Council could defer this designation to a future City Council meeting.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A



STAFF REPORT NO. 2
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Theresa Schyma, Deputy City Clerk

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich
12/30/2015

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich
12/30/2015

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the approval of a resolution designating an official newspaper for 2016.

EXECUTIVE SUMMARY:

The Charter of the City of Richfield requires in Section 13.01 that the City Council annually designate an official newspaper for the City.

The Sun-Current has served as the official paper for the City for many years and has proven to be a reliable and professional publication that is delivered to nearly all residences in the City. The Sun-Current has expressed an interest in continuing to serve as the official newspaper of the City.

RECOMMENDED ACTION:

By Motion: Approve a resolution designating the Richfield Sun-Current as the official newspaper for the City of Richfield for 2016.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

This information is contained in the Executive Summary.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

This information is contained in the Executive Summary.

C. CRITICAL TIMING ISSUES:

The City Council typically considers the designation of an official newspaper at the first meeting in January of each year.

D. FINANCIAL IMPACT:

The 2016 price quote from the Sun-Current for the publication of legal notices is reasonable and less than 1/4 the cost of publishing in the Star Tribune.

E. LEGAL CONSIDERATION:

A newspaper must be designated each year by the City for publication of all official and legal City business.

ALTERNATIVE RECOMMENDATION(S):

The City Council could choose to postpone designation of an official newspaper to a future meeting and request the City Clerk's office to gather quotes from other newspapers.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None.

ATTACHMENTS:

Description	Type
□ Resolution	Resolution Letter
□ 2016 Sun Current quote	Backup Material
□ 2016 Star Tribune quote	Backup Material

RESOLUTION NO.

RESOLUTION DESIGNATING AN OFFICIAL NEWSPAPER FOR 2016

WHEREAS, the Charter of the City of Richfield requires in Section 13.01 thereof that the City Council annually designate an official newspaper for the City.

NOW, THEREFORE, BE IT RESOLVED that the Richfield Sun-Current is designated the official legal newspaper for the City of Richfield for 2016 for all publications required to be published therein.

Adopted by the City Council of the City of Richfield, Minnesota this 12th day of January, 2016.

Debbie Goettel, Mayor

ATTEST:

Elizabeth VanHoose, City Clerk



December 2015

City of Richfield
City Council
6700 Portland Avenue
Richfield, MN 55423-2599

Dear City Council Members:

Please accept the following bid from the **Richfield Sun-Current** for legal newspaper designation for the City of Richfield. This newspaper is qualified by the State of Minnesota as a legal newspaper under Minnesota Statutes Section 331A.02, Subd. 1.

The following rate structure for legals is effective January 1, 2016:

First insertion:	\$11.50 per column inch
Subsequent insertions:	\$6.25 per column inch
Characters per inch:	320
Lines per inch:	9

A notarized affidavit will be provided for each notice published. Additional affidavits are \$2.50 each. A \$20.00 charge will be assessed on legal notices that require typing. All published legal notices are posted on the *Sun-Current* website at no additional charge.

The *Sun-Current* is published weekly on Thursdays. The deadline is 2:00 p.m. on Thursday for publication the following Thursday. Please email legal notices to sunlegals@ecm-inc.com.

Thank you for considering the *Sun-Current* as the official newspaper for the City of Richfield for the upcoming year. We appreciate the opportunity to serve the needs of your community.

Sincerely,

A handwritten signature in black ink that reads "Michael Jetchick".

Michael Jetchick
Sales Manager

From: Place Ads [mailto:placeads@startribune.com]
Sent: Tuesday, December 08, 2015 2:30 PM
To: Theresa Schyma
Subject: RE: 2016 price quote for legal notices

Hi Theresa,
Here are the answers to your questions

- 1) Starting January 1 of next year - what is your rate per line?
The per line rate for legal notices is \$5.60 per day
- 2) How many lines per inch?
11.33 lines equals one inch of printed space
- 3) How many approximate characters per line, including spaces and punctuation?
Approximately 32 characters (including spaces & punctuation) will fit into each line
- 4) What is the column width?
The column width is 1.63 inches

We create notarized affidavits digitally and email them to you within 24-48 hours of the final date of your notice's run schedule. If you have any additional questions please let us know.

Thanks so much

-

Brian Foley
Star Tribune
Advertising Call Center
612-673-7000
placeads@startribune.com
650 3rd Ave S, suite 1300 | Minneapolis, MN | 55488





STAFF REPORT NO. 3
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Chris Regis, Finance Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich
1/6/2016

OTHER DEPARTMENT REVIEW: None.

CITY MANAGER REVIEW: Steven L. Devich
1/6/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the approval of the resolution authorizing the use of credit cards by City employees otherwise authorized to make purchases on behalf of the City.

EXECUTIVE SUMMARY:

In accordance with Minnesota Statutes, the City of Richfield must authorize the use of credit cards by any City employee authorized to make purchases on behalf of the City.

In addition, in today's business environment, most retail businesses, will no longer allow the City to purchase on account and will only accept a City check or a City credit card.

Finally, the use of a City credit card provides efficiency and flexibility for employees to purchase goods and services on behalf of the City.

RECOMMENDED ACTION:

By Motion: Adopt the resolution authorizing the use of City credit cards by City employees otherwise authorized to make purchases on behalf of the City.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The following are the current credit/purchasing cards in use by City employees:

- Four VISA credit cards issued through the Richfield Bloomington Credit Union in the name of the City. The cardholders are the following:
 - City Manager
 - Community Development Director
 - Recreation Services Director
 - Wood Lake Nature Center Manager
- Two Sam's Club credit cards issued to the City of Richfield Recreation Services Department. The Recreation Program division and the Ice Arena use the cards.
- Two Petco credit cards issued to the City of Richfield Public Safety Department. The credit card will be maintained by the following:
 - K-9 Officers (2) – two cards

The City participates in Purchasing Card program as offered through US Bank. The program is designed to make the purchasing/procurement process for low dollar valued items more efficient. The intent is to save time and paperwork by reducing the need for purchase orders, petty cash, check requests and employee reimbursements.

The City Purchasing card program began in 2010 on a limited basis and has expanded since that time. The program will allow controls to be put in place to limit monthly and single purchase amounts. Finally, a City Purchasing Card Policy has been established which is consistent with the City's Purchasing Policy and Minnesota Statutes.

US Bank Purchasing Card Program. The following twenty six purchasing cards will be issued to the following:

- Building Services Employees (3) – three cards.
- Utility Department Employees (2) – two cards.
- Information Technology Employees (4) – four cards.
- Assistant City Manager (1) – one card.
- Finance Manager (1) – one card.
- City Clerk (1) – one card.
- Recreation Service Employees (3) – three cards.
- Public Safety Employees (5) – five cards.
- Fire Chief (1) – one card.
- Communications Coordinator (1) – one card.
- Public Works Employees (3) – three cards.
- Community Development Accountant (1) – one card.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- In accordance with Minnesota Statutes Section 471.382, the City of Richfield must authorize the use of credit cards by any City employee otherwise authorized to make a purchase on behalf of the City.
- Further, if a City employee makes or directs a purchase by credit card that is not approved by the City Council, the employee could be personally liable for the amount of the purchase.
- A purchase by credit card must otherwise comply with all statutes, rules, and City policies applicable to City purchases.
- Finally, the City's auditors recommend that the City authorize the use of credit cards by City employees on an annual basis.

C. CRITICAL TIMING ISSUES:

None.

D. FINANCIAL IMPACT:

The holders of City credit cards are responsible for reviewing and approving all purchases entered into with the credit card.

E. LEGAL CONSIDERATION:

The City is required by Minnesota Statute 471.382 to authorize the use of credit cards by City employees otherwise authorized to make purchases on behalf of the City.

ALTERNATIVE RECOMMENDATION(S):

The City Council could decide to not authorize the use of credit cards by City employees. However, most retail businesses in today's environment will no longer allow the City to purchase on account and will only accept a City check or a City credit card. The use of City credit cards by employees provides efficiency and flexibility for employees to purchase goods and services on behalf of the City.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A.

ATTACHMENTS:

Description	Type
▣ 2016 Credit Card Authorization Resolution	Resolution Letter

RESOLUTION NO.

RESOLUTION AUTHORIZING THE USE OF CREDIT CARDS BY CITY EMPLOYEES OTHERWISE AUTHORIZED TO MAKE PURCHASES ON BEHALF OF THE CITY OF RICHFIELD FOR THE YEAR 2016

BE IT RESOLVED, by the City Council of the City of Richfield as follows:

That, in accordance with Minnesota Statutes, Section 471.382, the City Council of the City of Richfield may authorize the use of a credit card by City employees otherwise authorized to make a purchase on behalf of the City.

The authorization is subject to modification and revocation at any time by said City Council, of the City of Richfield, and subject to the following terms and conditions:

If a City employee makes or directs a purchase by credit card that is not approved by the City Council, the employee can be personally liable for the amount of purchase.

The purchases by credit card must comply with all statutes, rules and City of Richfield policies applicable to City purchases.

BE IT FURTHER RESOLVED, that designated City staff is hereby authorized to use the following City credit cards to make purchases on behalf of the City of Richfield:

- Four VISA credit cards issued through the Richfield Bloomington Credit Union in the name of the City. The cardholders are the following:
 - City Manager
 - Community Development Director
 - Recreation Services Director
 - Wood Lake Nature Center Manager
- Two Sam's Club credit cards issued to the City of Richfield Recreation Services Department. The credit cards will be maintained by the following:
 - Recreation Programs Division (2) – two cards.
- Two Petco credit cards issued to the City of Richfield Public Safety Department. The credit card will be maintained by the following:
 - K-9 Officers (2) – two cards.
- Twenty six US Bank Purchasing cards. The cardholders will be the following:
 - Building Services Employees (3) – three cards.
 - Utility Department Employees (2) – two cards.
 - Information Technology Employees (4) – four cards.
 - Assistant City Manager (1) – one card.
 - Finance Manager (1) – one card.
 - City Clerk (1) – one card
 - Recreation Services Employees (3) – three cards.
 - Public Safety Employees (5) – four cards.
 - Fire Chief (1) – one card.
 - Communications Coordinator (1) – one card.
 - Public Works Employees (3) – three cards.
 - Community Development Accountant (1) – one card.

Passed by the City Council of the City of Richfield, Minnesota this 12th day of January, 2016.

Debbie Goettel, Mayor

ATTEST:

Elizabeth VanHoose, City Clerk



STAFF REPORT NO. 4
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Chris Regis, Finance Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich
1/6/2016

OTHER DEPARTMENT REVIEW: None.

CITY MANAGER REVIEW: Steven L. Devich
1/6/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the approval of the resolutions designating official depositories for the City of Richfield for 2016, including the approval of collateral.

EXECUTIVE SUMMARY:

In compliance with Minnesota statutes, the City of Richfield must designate on an annual basis those financial institutions it does business with.

U.S. Bank acts as the banking institution in the City's banking arrangement with the 4M Fund. The following resolutions for the City Council's consideration will designate U.S. Bank/4M Fund as a depository of City funds, and designate certain savings and loan associations, banks, credit unions and certain financial institutions as depositories for the investment of City funds.

RECOMMENDED ACTION:

By Motion: Adopt the resolutions designating official depositories for the City of Richfield for 2016, with the understanding that the City could not invest in any of the depositories beyond the level of insurance coverage or the pledged collateral.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

None.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- In accordance with Minnesota Statutes Section 118A.01 - 118A.06, the City of Richfield must designate financial institutions annually. The institutions must pledge the collateral over and above the amount of federal insurance, as public depositories.
- U.S. Bank acts as the banking institution in the City's banking arrangement with the 4M Fund. Monies received, checks written by the City, flow through U.S. Bank, however, at the end of each business day, any proceeds remaining in City U.S. Bank accounts are swept to the 4M Fund to be invested. Therefore, at the end of the business day the City accounts are zero, which means the collateral requirements of Minnesota Statutes Section 118A.03 are not required. Accordingly, U.S. Bank has met all other statutory requirements and should be considered as a depository for the

City's Deputy Registrar, payroll and vendor accounts and all savings deposits.

- The City must also designate annually, certain savings and loan associations, banks, and credit unions as official depositories for deposit and investment of certain City funds. With approval of these official depositories, the City will be able to deposit and invest funds in these institutions, not exceeding the federal insurance of \$250,000.
- Finally, a designation must be made for certain financial institutions as depositories for the investment of City funds for 2016. These institutions, such as investment brokerage firms, offer government securities in the manner required by law. These financial institutions include U.S. Bank Institutional Sales, RBC Capital Markets, Wells Fargo Institutional Brokerage & Sales, Raymond James & Associates, Inc., Northland Securities, Oppenheimer & Co., and the 4M Fund.

C. CRITICAL TIMING ISSUES:

None.

D. FINANCIAL IMPACT:

None.

E. LEGAL CONSIDERATION:

The City is required by Minnesota Statute 118A.01 - 118A.06, to designate as a depository of funds, insured banks or thrift institutions. Any collateral so deposited is accompanied by an assignment pledged to the City in the amount specified in the attached resolutions.

ALTERNATIVE RECOMMENDATION(S):

The City Council could solicit other financial institutions for official depositories, but past relationships with the depositories recommended have proven satisfactory for the City.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A.

ATTACHMENTS:

Description		Type
□ Resolution Designating US Bank a depository of funds of the City of Richfield for the year 2016		Resolution Letter
□ Resolution Designating certain savings and loan associations, banks, and credit unions as depositories for the investment of City funds in 2016		Resolution Letter
□ Resolution Designating certain financial institutions as depositories for the investment of City of Richfield funds in 2016		Resolution Letter

RESOLUTION NO.

**RESOLUTION DESIGNATING U.S. BANK
A DEPOSITORY OF FUNDS OF THE CITY OF RICHFIELD
FOR THE YEAR 2016**

BE IT RESOLVED, by the City Council of the City of Richfield as follows:

That, in accordance with Minnesota Statutes, Section 118A.01- 118A.06, U.S. Bank be, and hereby is designated a depository of the funds of the City of Richfield, subject to modification and revocation at any time by said City, and subject to the following terms and conditions:

The said depository shall not be required to give bonds or other securities for such deposits provided that the total sum thereof shall not at any time exceed in any depository the sums for which its deposits are insured under the Acts of Congress of the United States relating to insurance of bank deposits; but that in case such deposits in any such depository shall at any time exceed such insured sum, said depository shall immediately furnish bonds or other security for such excess according to law, approved by the City Council of said City.

That said depository shall pay on demand all deposits therein; and shall pay all time deposits, at or after the end of the period for which the same shall be deposited, on demand.

BE IT FURTHER RESOLVED, that there shall be maintained a general account in which shall be deposited all monies from the water, sewer, storm sewer, liquor, swimming pool/ice arena, deputy register fees, City permits and other deposits not otherwise specifically provided for. The following officers or their facsimile signatures shall sign checks on this account;

STEVEN L. DEVICH, CITY MANAGER
CHRIS REGIS, FINANCE MANAGER

BE IT FURTHER RESOLVED, that all funds remaining in the account at the end of each business day will be transferred from U.S. Bank to the 4M Fund where funds deposited are invested and insured.

Passed by the City Council of the City of Richfield, Minnesota this 12th day of January, 2016.

Debbie Goettel, Mayor

ATTEST:

Elizabeth VanHoose, City Clerk

RESOLUTION NO.

**RESOLUTION DESIGNATING CERTAIN SAVING AND LOAN ASSOCIATIONS,
BANKS AND CREDIT UNIONS AS DEPOSITORIES FOR THE DEPOSIT AND
INVESTMENT OF CITY FUNDS IN 2016**

BE IT RESOLVED, by the City Council of City of Richfield, Minnesota

WHEREAS, pursuant to Minnesota Statutes, Sections 118A.01 – 118A.06, municipal funds may be deposited in any Savings and Loan Association, Bank or Credit Union which has its deposits insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA), and

WHEREAS, the amount of said deposits may not exceed the FDIC/NCUA insurance covering such deposits which insurance amount is presently \$250,000, and

WHEREAS, the deposit of City funds in Savings and Loan Associations and Banks would provide greater flexibility in the City's investment program and maximize interest income thereon, and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Richfield, Minnesota, as follows:

1. It is hereby found and determined that it is in the best interest of the proper management of City funds that various banks be designated as additional depositories for City funds for 2016.
2. It is further found and determined that the purpose of such depository designation is to facilitate the proper and advantageous deposit and investment of City funds and that such designation is not exclusive nor does it preclude the deposit of any City funds in other officially designated depositories of the City.
3. The Treasurer and Finance Manager are hereby authorized to deposit City funds in various depositories up to the amount of \$250,000, or such other amount as may be subsequently permitted by law, such deposits to be in the form of demand accounts, payable to the City of Richfield on the signatures of the City Treasurer or Finance Manager. Such deposits may be made and withdrawn from time to time by the Treasurer or Finance Manager as his best judgment and the interests of the City dictates.
4. The investment of funds and the reporting thereof pursuant to this resolution shall be conducted in accordance with established policies of the City regarding the investment of City funds.

Adopted by the City Council of the City of Richfield, Minnesota this 12th day of January, 2016.

Debbie Goettel, Mayor

ATTEST:

Elizabeth VanHoose, City Clerk

RESOLUTION NO.

**RESOLUTION DESIGNATING CERTAIN FINANCIAL
INSTITUTIONS AS DEPOSITORIES FOR THE INVESTMENT OF
CITY OF RICHFIELD FUNDS IN 2016**

WHEREAS, the City of Richfield has money which is available for investment, and

WHEREAS, different financial institutions offer different rates of return on investments,
and

WHEREAS, the City of Richfield shall purchase U. S. Treasury Bills, U. S. Treasury Notes and other such government securities in the manner required by law from the institution offering the highest rate to the City of Richfield providing greater flexibility in the investment program and maximize interest income thereon.

NOW, THEREFORE, BE IT RESOLVED, by the City of Richfield, Minnesota, in accordance with Minnesota Statutes, Sections 118A.01 – 118A.06, as follows:

1. It is hereby found and determined that it is in the best interest of the proper management of City of Richfield funds that certain financial institutions be designated as additional depositories for City of Richfield funds for 2016.
2. The following financial institutions designated as depositories for the City of Richfield funds:

RBC Capital Markets
Wells Fargo Institutional Brokerage & Sales
Northland Securities, Inc.
Oppenheimer & Co.

Raymond James & Assoc.
4M Fund
U.S. Bank Institutional Sales

3. The Treasurer and Finance Manager are hereby authorized to deposit the City of Richfield funds in any or all of the depositories herein designated. Such deposits may be made and withdrawn from time to time by the Treasurer or Finance Manager's judgment and as the interest of the City of Richfield dictates.

4. The investment of funds and the reporting thereof pursuant to this resolution shall be conducted in accordance with established policies regarding the investment of these funds.

Adopted by the City Council of the City of Richfield, Minnesota this 12th day of January, 2016.

Debbie Goettel, Mayor

ATTEST:

Elizabeth VanHoose, City Clerk



STAFF REPORT NO. 5
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Matt Brillhart, Planning Technician

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
1/6/2016

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich
1/6/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of a resolution granting site plan approval and variances to allow a fitness studio in an existing building at 6722 Penn Avenue.

EXECUTIVE SUMMARY:

Originally constructed in 1951, the building at 6722 Penn Avenue has been vacant for several years. The site was most recently approved for an adult day care facility in 2013; however that business never actually occupied the building. The site was previously used as office/meeting space and small engine repair. The applicant would like to lease approximately one-half of the building for use as a fitness studio. Because the building has been vacant for over one year, all legally nonconforming status has expired; any new user must meet or approach current Code requirements or apply for variances. The applicant has requested variances to parking lot and building setbacks, impervious surface maximums, and landscaping regulations. The proposed use is reasonable and offers improvements to the site. Staff recommends approval of the proposed site plan and variances.

RECOMMENDED ACTION:

By motion: Approve the resolution granting site plan approval and variances to allow a fitness studio in an existing building at 6722 Penn Avenue.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

Discussed in Executive Summary.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

This property is zoned Mixed Use – Community (MU-C) and is within the Penn Avenue Corridor (PAC) Overlay District. The Penn Avenue Corridor District allows for a balanced mix of commercial, office and residential uses that together create a cohesive and pedestrian-friendly area. Site plan approval is required prior to the change in use of a building. The proposed site plan will improve upon existing conditions, while allowing for reuse and aesthetic improvements.

General Requirements

Service uses require three parking stalls per 1,000 feet of gross floor area. The applicant is proposing to lease half, or 1,800 square feet, of the 3,600 square foot building. The other half of the building remains vacant at this time. The requirement for this use is five stalls after a reduction for public transit proximity. There are currently eight parking stalls on site, and another three on Penn Avenue. A surplus of six stalls remains for an adjacent new tenant in the vacant portion of the building. Staff believes that additional parking could also be striped on site, if necessary.

The applicant is requesting variances from building and parking lot setbacks, impervious surface regulations, and landscaping requirements.

Variances Requested: Required (R), Proposed (P)

Minimum parking lot setback (R: 5 ft.; P: 0 ft.)

- The existing parking lot has a shared drive aisle with the adjacent property to the north. No changes are proposed.

Maximum building setbacks (R: 15 ft.; P: front-22 ft., rear-29 ft., north side-50 ft.)

- No changes are proposed to the building dimensions.

Maximum impervious surface coverage (R: 80%; P: 95.7%)

- There is an opportunity to add a limited amount of pervious surface behind the building; however, staff does not believe that there would be any tangible benefit.

Landscaping requirements

- No major changes to existing conditions are proposed and several requirements will not be met. The site includes landscaped planting areas facing Penn Avenue. These plantings must be maintained to meet the intent of the Penn Avenue Design Guidelines, including live plant materials during the spring, summer, and fall and seasonal décor over the winter.

Additional information related to the requested variances and required findings can be found in the attached document.

General Criteria for Site Plan Evaluation

In evaluating a site plan, the Planning Commission and City Council shall consider its compliance with the following criteria which are discussed more fully in the attached requirements document:

- Consistency with the various elements and objectives of the City's Comprehensive Plan.
- Consistency with the purposes of the City Code.
- Consistency and harmony with the general appearance of neighboring developed areas and open spaces.
- An internal sense of order and provision of a desirable environment.
- Appropriateness of the amount and arrangement of open space and landscaping, the building materials, textures and colors.
- Adequacy of circulation and parking for all modes of transport.
- Use of energy-conserving design.
- Protection of adjacent and neighboring properties from negative environmental impacts.

Criteria listed are all met or improved by the proposed site plan.

C. CRITICAL TIMING ISSUES:

60-DAY RULE: The 60-day clock 'started' when a complete application was received on November 30, 2015. A decision is required by January 29, 2016 OR the Council must notify the applicant that it is extending the deadline (up to a maximum of 60 additional days or 120 days total) for issuing a decision.

D. FINANCIAL IMPACT:

None.

E. LEGAL CONSIDERATION:

- A public hearing was held before the Planning Commission on December 14, 2015.
- Notice of the public hearing was published in the Sun Current newspaper and mailed to properties within 350 feet of the site. No members of the public spoke at the public hearing.
- The Planning Commission recommended approval of the proposed site plan and variances (7-0).

ALTERNATIVE RECOMMENDATION(S):

- Approve the resolution with modifications.
- Deny the request for site plan approval and variances with a finding that the proposal does not meet City requirements.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Catherine Molinett, applicant

ATTACHMENTS:

Description	Type
☐ Resolution	Resolution Letter
☐ Requirements Attachment	Backup Material
☐ Site Plan, Floor Plan, Photos, Zoning Maps	Exhibit

RESOLUTION NO. _____

**RESOLUTION GRANTING APPROVAL
OF A SITE PLAN
AND VARIANCES AT
6722 PENN AVENUE**

WHEREAS, an application has been filed with the City of Richfield which requests approval of site plans for an athletic studio on the parcel of land located at 6722 Penn Avenue (the "Property"), legally described as:

Lots 5 and 6, Block 16, Tingdale Brothers Lincoln Hills Addition, Hennepin County, Minnesota

WHEREAS, the Planning Commission of the City of Richfield held a public hearing and recommended approval of the requested conditional use permit and variances at its December 14, 2015 meeting; and

WHEREAS, notice of the public hearing was published in the Sun-Current and mailed to properties within 350 feet of the subject property; and

WHEREAS, the Zoning Code requires a minimum parking lot setback of 5 feet from adjacent commercial and mixed-use property, while the proposed site plan allows for parking lot setbacks of 0 feet; and

WHEREAS, the existing building at 6722 Penn Avenue does not meet various setback requirements specified in the Mixed Use Community (MU-C) District; and

WHEREAS, impervious surfaces cover 95.7% of the site; and

WHEREAS, the site does not meet general landscaping and screening requirements, as described in Zoning Code Subsection 544.03; and

WHEREAS, Minnesota Statutes Section 462.357, Subdivision 6, provides for the granting of variances to the literal provisions of the zoning regulations in instances where their enforcement would cause "practical difficulty" to the owners of the property under consideration; and

WHEREAS, based on the findings below, the Richfield City Council approves the requested variances from Richfield City Code Subsection 537.07, Subdivision 1; Subsection 544.03; and Subsection 544.13, Subd. 5; and

WHEREAS, the City has fully considered the request for approval for the site plan with variances; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Richfield, Minnesota, as follows:

1. The City Council makes the following general findings:
 - a. The Property is zoned Mixed Use Community (MU-C) and is located in the Penn Avenue Corridor overlay.

- b. Health club / athletic studio uses are permitted in the MU-C District. The Penn Avenue Corridor District provides for a balanced mix of commercial, office and residential uses that together create a cohesive and pedestrian-friendly area.
 - c. The site and building are existing, and have been used for office, service, or retail uses since 1951.
 - d. Reuse of this building on this site in any fashion will require variances.
 - e. Code states that the minimum parking lot setback from adjacent mixed-use property is 5 feet. A variance from Subsection 544.13, Subd. 5 is required.
 - f. Code states that the maximum front, side, and rear setbacks for a principal building shall not exceed 15 feet. The proposed setbacks are 22 feet, 50 feet, and 29 feet, respectively. Code states that the maximum impervious surface area shall not exceed 80%. The proposed impervious surface area is 95.7%. Variances from Subsection 537.07, Subd. 1 are required.
 - g. Proposed landscaping and screening plans do not meet several requirements. A variance from Subsection 544.03 is required.
2. With respect to the application for variances from the above-listed requirements, the City Council makes the following findings:
 - a. Strict enforcement of the Richfield Zoning Code Subsections listed above would cause a practical difficulty. The existing property cannot be used in any fashion without variances. It is reasonable to allow the reuse of an existing building on an existing lot.
 - b. Unique circumstances affect the Property that were not created by the land owner. The existing lot was created and building constructed prior to the adoption of current Codes. These circumstances were not created by the land owner.
 - c. Granting the requested variances will not alter the essential character of the neighborhood. The requested variances will allow for the reuse and improvement of a vacant building. The improvements proposed will benefit the surrounding neighborhood by improving the aesthetics of the site and bring new customers to the Penn Avenue Corridor.
 - d. The variances requested are the minimum necessary to alleviate the practical difficulty. The proposed variances are the minimum necessary to reuse this property.
 - e. The variance is in harmony with the general purpose and intent of the ordinance and consistent with the comprehensive plan. The proposed plans are consistent with the general purposes and intents of the Zoning Ordinance and Comprehensive Plan.
3. With respect to the proposed site plan, the City Council finds that it will adequately serve the purpose for which it is proposed and will not have adverse effect upon the public safety or general welfare.
4. Based upon the above findings, variances to the above-specified requirements are hereby approved.
5. Based upon the above findings and variances, the proposed site plan is hereby approved according to the terms of Richfield City Code Subsection 547.13 with the following additional stipulations:
 - a. The parking lot must be re-striped in accordance with the approved plan, including one accessible parking space and loading area as close as possible to the accessible entrance.
 - b. Required plantings in front of the building must be continuously maintained and include live plant materials during the spring, summer and fall and seasonal décor over the winter.
 - c. The entrance(s) to the building facing Penn Avenue must be covered; either by an overhang or the installation of awnings.
 - d. All trash must be stored inside the building.

- e. The applicant is responsible for obtaining all required permits, compliance with all requirements detailed in the City's Administrative Review Committee Report dated November 19, 2015, and compliance with all other City and State regulations. Permits are required prior to commencement of any work;
- f. That the recipient of this approval record this Resolution with the County, pursuant to Minnesota Statutes Section 462.36, Subd. 1 and the City's Zoning Ordinance Section 547.11, Subd. 7. Proof of recording is required prior to the issuance of a building permit;
- g. Prior to the issuance of an occupancy permit, the applicant shall submit a surety equal to 125% of the value of any improvements (based on two bids including labor cost) not yet complete.
- h. This approval shall expire one year from the date of approval unless the use has commenced or a building permit has been obtained and construction begun.

Adopted by the City Council of the City of Richfield, Minnesota this 12th day of January 2016.

Debbie Goettel, Mayor

ATTEST:

Elizabeth VanHoose, City Clerk

Code Requirements / Required Findings

Part 1 - Site Plan Approval (Subsection 547.13)

In evaluating a site plan, the Planning Commission and Council shall consider its compliance with the following:

- a) *Consistency with the various elements and objectives of the City's long range plans including, but not limited to, the Comprehensive Plan.* In the Penn Avenue Corridor, the Mixed Use District is intended to be a vibrant, pedestrian-oriented neighborhood center. The District can accommodate a variety of uses. The proposed use of the property for a service use (athletic studio) is in keeping with these intentions.
- b) *Consistency with the purposes of the Zoning Code.* The purposes of the Zoning Code include: assisting in the implementation of the Comprehensive Plan; creating harmonious and workable relationships among land uses; enhancing and protecting the physical appearance of the City and more. The proposal is consistent with these purposes of the Zoning Code.
- c) *Preservation of the site in its natural state, insofar as practicable, by minimizing tree and soil removal, and designing any grade changes so as to be in keeping with the general appearance of neighboring developed or developing areas.* The site is already fully developed and is over 95 percent impervious. The proposed site plan has been designed so as to compliment and improve the surrounding area.
- d) *Creation of a harmonious relationship of buildings and open spaces with the terrain and with existing and future buildings having a visual relationship to the proposed development.* The proposed building façade is complimentary to the adjacent building on the property to the south. The site design reduces auto and pedestrian safety issues.
- e) *Creation of a functional and harmonious design for structures and site features including:*
 - i. *Creation of an internal sense of order for the various functions and buildings on the site and provision of a desirable environment for occupants, visitors and the general community;*
 - ii. *Appropriateness of the amount and arrangement of open space and landscaping to the design and function of the development;*
 - iii. *Appropriateness of the materials, textures, colors and details of construction as an expression of the design concept of the project and the compatibility of the same with the adjacent and neighboring structures and functions; and*
 - iv. *Adequacy of vehicular, cycling and pedestrian circulation, including walkways, interior drives and parking, in terms of location and number of access points to the public streets, width of interior drives and*

access points, general interior circulation, separation of pedestrian, cycling and vehicular traffic and arrangement and amount of parking so as to be safe, convenient and, insofar as practicable, compatible with the design of proposed buildings, structures and neighboring properties.

Adequate parking is provided. The striping of an accessible parking space near the front building entrance will bring the building into compliance with ADA requirements. The existing landscaping area facing Penn Avenue will be maintained to improve curb appeal of the building. There is limited opportunity to improve the site further given the placement and size of the building.

- f) *Creation of an energy-conserving design through design location, orientation and elevation of structures, the use and location of glass in structures, and the use of landscape materials and site grading.* The proposal will not worsen conditions.
- g) *Protection of adjacent and neighboring properties through reasonable provisions for such matters as surface water drainage, sound and sight buffers, preservation of views, light and air, and those aspects of design, not adequately covered by other regulations, which may have substantial effects on neighboring land uses.* No changes to surface water drainage, sound and/or sight impacts, views, etc. are anticipated.

Part 2 - Variances:

The proposed site plan will improve upon existing conditions, allowing for reuse and aesthetic improvements to site that has struggled with long-term vacancy. The applicant is requesting variances from parking lot setbacks, building setbacks, impervious surface regulations, and landscaping requirements.

Subsection 544.13, Subd. 5:

- Parking lot setback – 5 feet from adjacent mixed-use (proposed – 0 feet)

Subsection 537.07, Subd. 1:

- Front, side, and rear building setbacks – 15 feet maximum (proposed – 22 feet, 50 feet, and 29 feet, respectively)
- Impervious surface regulations – 80% maximum (proposed – 95.7%)
There is an opportunity to add a limited amount of pervious surface behind the building; however, staff does not believe that there would be any tangible benefit.

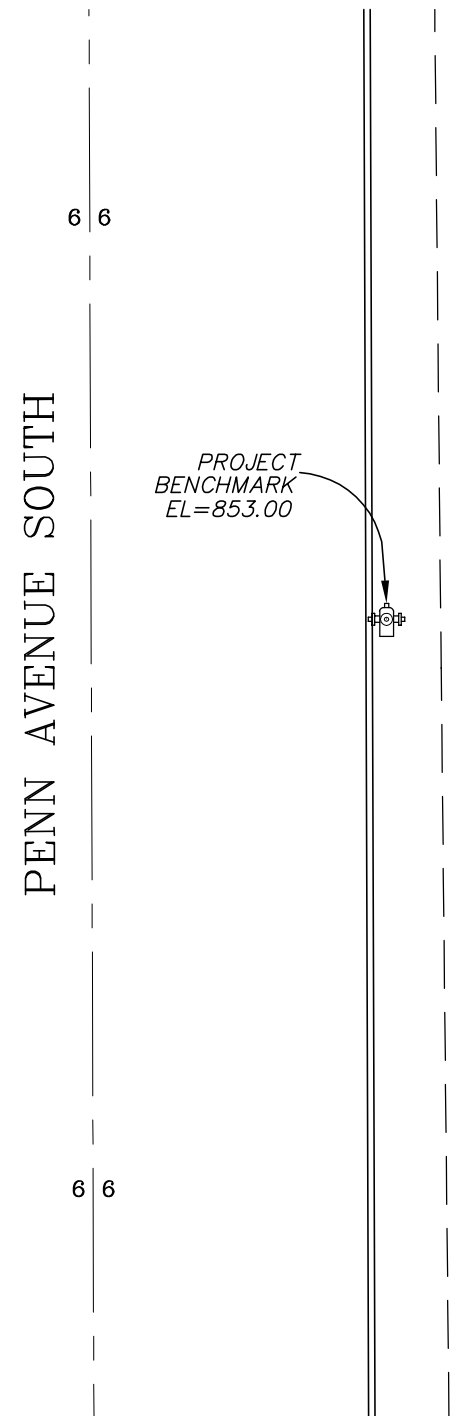
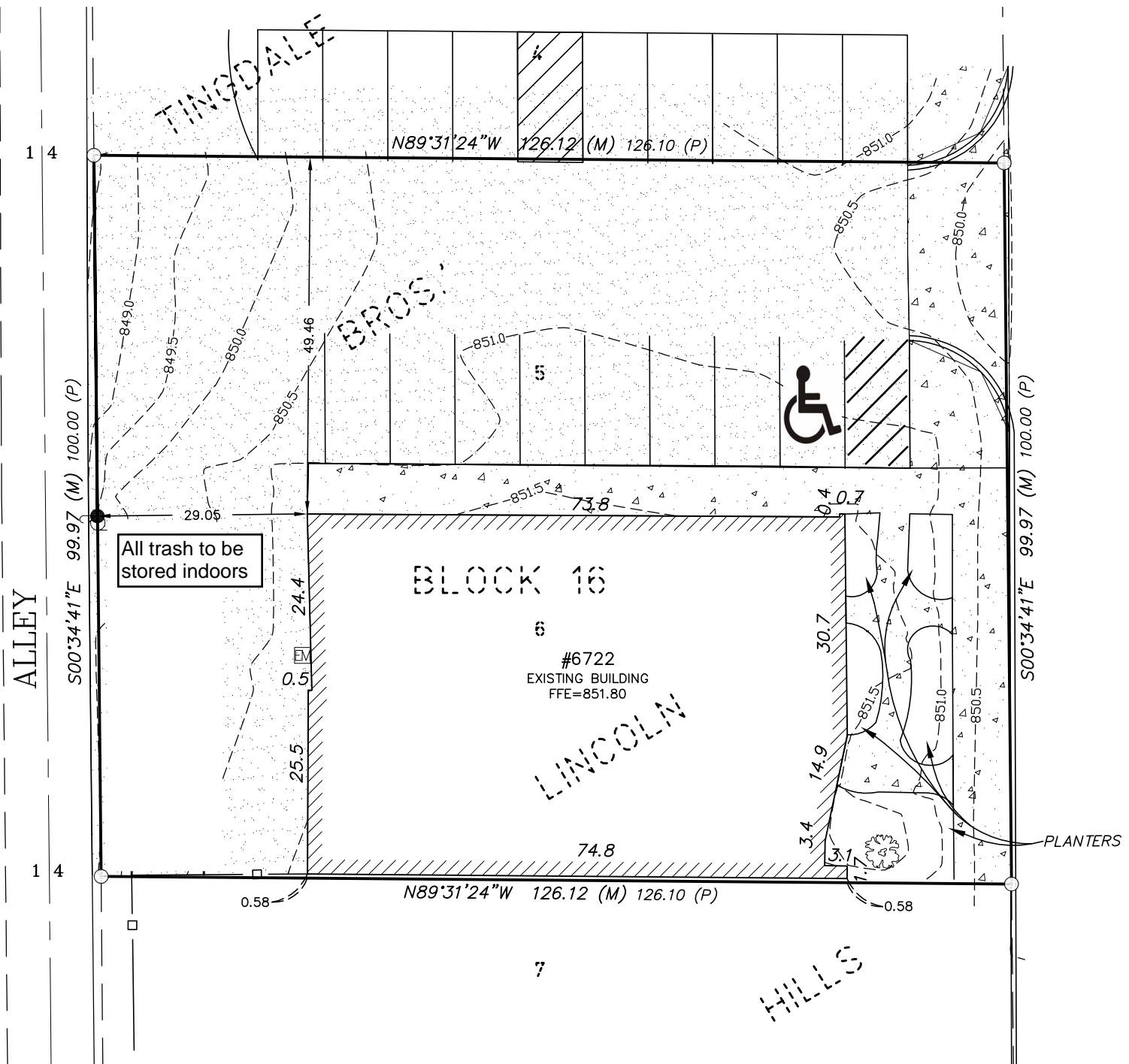
Subsection 544.03:

- Landscaping and requirements – no major changes to existing conditions are proposed and several requirements will not be met. The site includes landscaped planting areas facing Penn Avenue. These plantings must be maintained to meet the intent of the Penn Avenue Design Guidelines, including live plant materials during the spring, summer, and fall and seasonal décor over the winter.

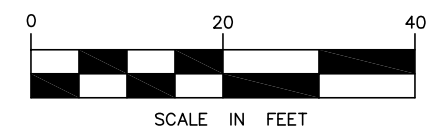
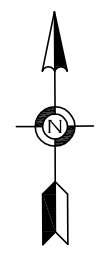
The findings necessary to approve variances are as follows (Subsection. 547.11):

- a) *There are “practical difficulties” that prevent the property owner from using the property in a reasonable manner.* The existing property cannot be used in any fashion without variances. It is reasonable to allow the reuse of an existing building on an existing lot.
- b) *There are usual or unique circumstances that apply to the property which were not created by the applicant and do not apply generally to other properties in the same zone or vicinity.* The building was constructed in 1951, prior to the adoption of current Codes. These circumstances were not created by the land owner.
- c) *The variance would not alter the character of the neighborhood or the locality.* The requested variances will allow for the reuse and improvement of a vacant building. The improvements proposed will benefit the surrounding neighborhood by improving the aesthetics of the site and bring new customers to the Penn Avenue Corridor. No negative impacts are expected.
- d) *The variance is the minimum necessary to alleviate the practical difficulty.* The proposed variances are the minimum necessary to reuse this property.
- e) *The variance is in harmony with the general purpose and intent of the ordinance and consistent with the Comprehensive Plan.* The proposed plans are consistent with the general purposes and intents of the Zoning Ordinance and Comprehensive Plan as discussed further in Part 1 of this document.

SITE PLAN



Call 48 Hours before digging
GOPHER STATE ONE CALL
Twin Cities Area 651-454-0002
MN. Toll Free 1-800-252-1166



LEGEND

- DENOTES FOUND PROPERTY IRON
- DENOTES SET 1/2" X 18" REBAR WITH PLASTIC CAP "PLS 25105"
- DENOTES BOUNDARY LINE
- DENOTES LOT LINE
- DENOTES SETBACK LINE
- DENOTES EXISTING CONTOUR LINE
- DENOTES WOOD FENCE
- DENOTES CONCRETE SURFACE
- DENOTES BITUMINOUS SURFACE
- DENOTES DRAINAGE FLOW
- DENOTES FIRE HYDRANT
- DENOTES ELECTRIC METER
- DENOTES ELECTRIC POWER POLE
- DENOTES DECIDUOUS TREE
- DENOTES FINISH FLOOR ELEVATION
- DENOTES MEASURED DISTANCE
- DENOTES PLATTED DISTANCE

HARDCOVER

EXISTING IMPERVIOUS SURFACES	12,057 SQ. FT.
TOTAL LOT AREA	12,605 SQ. FT.
EXISTING HARDCOVER	95.7 %

LEGAL DESCRIPTION

Lots 5 and 6, Block 16, TINGDALE BROS.' LINCOLN HILLS, Hennepin County, Minnesota

NOTES

- THE BASIS OF THE BEARING SYSTEM IS ASSUMED.
- NO SPECIFIC SOIL INVESTIGATION HAS BEEN COMPLETED
- NO TITLE INFORMATION WAS PROVIDED FOR THIS SURVEY. THIS SURVEY DOES NOT PURPORT TO SHOW ALL EASEMENTS OF RECORD.
- BOUNDARY WAS COMPUTED BASED ON THE EVIDENCE EXISTING AT THE TIME OF THE SURVEY. THE BOUNDARY MAY BE ADJUSTED IF MORE EVIDENCE EXISTS.
- EXISTING UTILITIES AND SERVICES SHOWN HEREON OWNER LOCATED EITHER PHYSICALLY ON THE GROUND DURING THE SURVEY OR FROM EXISTING RECORDS MADE AVAILABLE TO US OR BY RESIDENT TESTIMONY. OTHER UTILITIES AND SERVICES MAY BE PRESENT. VERIFICATION AND LOCATION OF UTILITIES AND SERVICES SHOULD BE OBTAIN FROM THE OWNERS OF RESPECTIVE UTILITIES BY CONTACTING GOPHER STATE ONE CALL AT (651) 454-0002 PRIOR TO ANY DESIGN, PLANNING OR EXCAVATION.

NO.	DATE	DESCRIPTION	BY

REFERENCE BENCHMARK

ELEVATION = 853.00 @ TOP NUT OF HYDRANT NW QUAD OF 6717 PENN AVENUE SOUTH.

BUILDING SETBACKS

ZONING: MUC - MIXED USED COMMUNITY
PAC - PENN AVE. CORRIDOR
BUILDING FRONT SETBACK - 0' MIN. 15' MAX.
SIDES AND REAR - 5 MIN. 15' MAX.

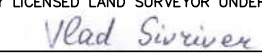
PARKING REQUIREMENTS

PARKING STALLS	
EXISTING	18
REQUIRED	6



ENGINEERING DESIGN & SURVEYING
6480 Wayzata Blvd. Minneapolis, MN 55426
OFFICE: (763) 545-2800 FAX: (763) 545-2801
EMAIL: info@edsmn.com WEBSITE: http://edsmn.com

I HEREBY CERTIFY THAT THIS SURVEY WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA.



DATED: 06/12/2013
VLADIMIR SIVRIVER L.S. NO. 25105

JOB NAME: ADULT DAY CARE

LOCATION: 6722 PENN AVE. SOUTH
RICHFIELD, MN

FIELD WORK DATE: 06/07/13

FIELD BOOK NO.: EDS-11 JANE

DRAWN BY: EP

CHECKED BY: VS

PROJECT NO.: 13-037

SHEET NO. 1 OF 1



6722 Penn Ave - Site Plan & Variances 1/2016

Surrounding Zoning



0 60 120 240 360 480 600 Feet

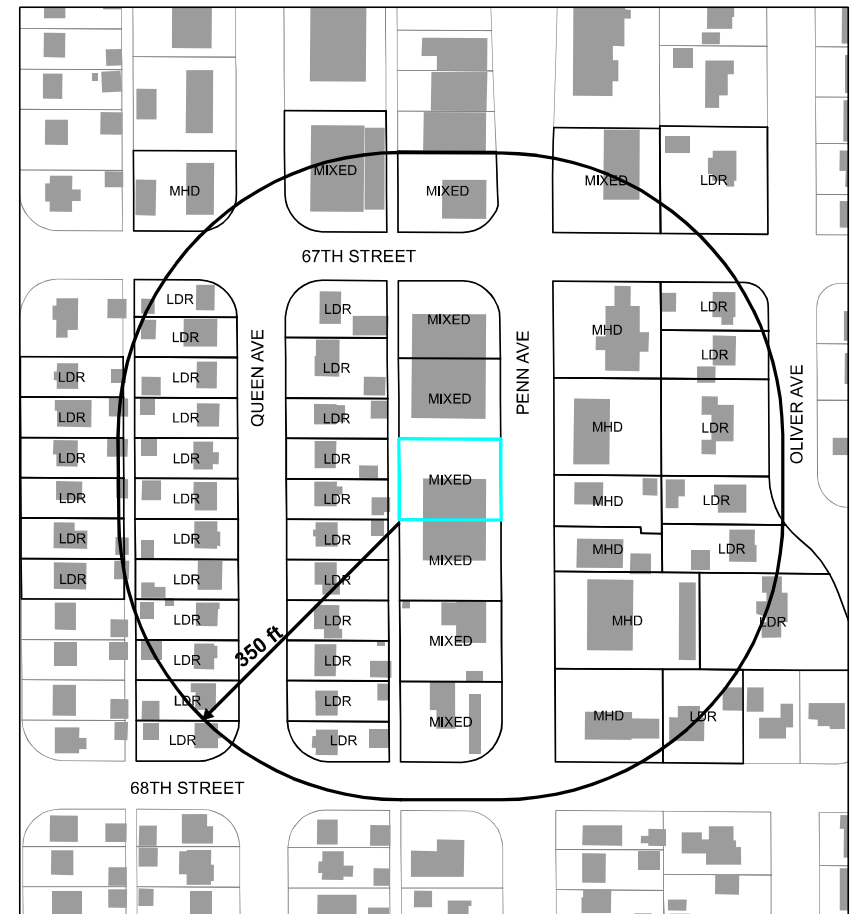
MU-C/PAC - Mixed-Use Community/Penn Avenue Corridor
R - Single Family Residential
R-1 - Low-Density Single Family Residential
MR-2 - Multi-Family Residential



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6722 Penn Ave - Site Plan & Variances 1/2016

Surrounding Comprehensive Plan



0 60 120 240 360 480 600 Feet

MIXED - Mixed Use
LDR - Low Density Residential
MHD - Medium-High Density Residential



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STAFF REPORT NO. 6
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Betsy Osborn, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Public Safety Director
1/5/2016

OTHER DEPARTMENT REVIEW: Mary Tietjen, City Attorney

CITY MANAGER REVIEW: Steven L. Devich
1/6/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the approval of the first reading of an ordinance to allow beekeeping in the City of Richfield.

EXECUTIVE SUMMARY:

The City Code currently prohibits beekeeping within the City. Beekeeping has become an accepted use throughout the metro area. The City has received several requests to allow beekeeping and after staff research and discussions the attached ordinance is being offered for consideration.

The City has never addressed beekeeping and since it's a new code, extensive discussions have occurred between Community Development, Recreation and Public Safety staff with assistance and review from the City Attorney's office concerning the contents of the code being recommended.

Wood Lake Nature Center staff are well versed on beekeeping issues and will be our technical experts should issues arise.

Planning Commission suggestions have been considered in the final version of the ordinance.

RECOMMENDED ACTION:

By motion: Approve the first reading of an ordinance allowing beekeeping within the City.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

Bees are currently a prohibited animal, for the purpose of keeping, under City Code. Beekeeping is not an allowed use under the Zoning Ordinance but a proposed change to the zoning code will be considered by the Planning Commission in 2015.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The attached draft of the beekeeping ordinance has been reviewed internally by many staff members to include persons in Zoning, Recreation (Wood Lake Nature Center), Building Inspection and Public Safety staff.

C. CRITICAL TIMING ISSUES:

There are no critical timing issues.

D. FINANCIAL IMPACT:

There is no financial impact.

E. LEGAL CONSIDERATION:

The City Attorney, with staff, has drafted the ordinance and will be available for legal questions. The attorney approves of its contents.

ALTERNATIVE RECOMMENDATION(S):

The Council could leave the ordinances as they currently are which would mean that beekeeping would be prohibited.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
□ Draft Beekeeping Ordinance	Ordinance

BILL NO. _____

AN ORDINANCE AMENDING CHAPTER IX OF THE RICHFIELD CODE OF ORDINANCES BY ADDING A NEW SECTION RELATING TO BEEKEEPING AND AMENDING ZONING PROVISIONS RELATING TO THE SAME

THE CITY OF RICHFIELD DOES ORDAIN:

Section 1. Subsection 509.21 of the Richfield Zoning Code relating to home occupations and prohibited activities, is amended as follows:

Subd. 11. Specific activities prohibited. The following activities shall not be allowed as home occupations:

- a) The repair, whether for consideration or not, of motor vehicles which are not registered to a resident of the dwelling on the property where the repair is made, or to a son or daughter, sibling, parent, grandparent, or grandchild of a resident of the property;
- b) Adult business establishments regulated under Section 1196 of the city code;
- c) The practice of medical, dental, chiropractic, psychiatric, or other similar treatment or therapy, including acupuncture, where the person(s) providing such treatment or therapy is not licensed by the State of Minnesota to administer such treatment or therapy; or in the case of massage therapy, where the person(s) providing such treatment is not certified by the "National Certification Board for Therapy Massage and Bodywork" or by the "Massage and Bodywork Licensing Examination;"
- d) Businesses, educational programs, or similar gatherings which meet on a regular basis, having more than six (6) nonresident adults in attendance at one (1) time;
- e) Pet grooming or pet care facilities, except those legally existing on or before June 1, 1995;
- f) Gun or ammunition sales/repair, except those legally existing on or before June 1, 1995;
- g) Music instruction, unless conducted within a single-family (detached dwelling; ~~and~~
- h) Tattoo businesses; and
- i) Sale of honey produced by hives located within the city regulated under section 906 of the city code.

Section 2. Subsection 512.03 of the Richfield Zoning Code relating to permitted uses, is amended as follows:

512.03 Permitted uses in all districts.

- a) Public streets and highways;

- b) Underground public utilities;
- c) Parks and related recreational facilities owned by a governmental unit;
- d) Solar equipment as an accessory use; ~~and~~
- e) Horticulture/community gardens as an accessory to an established institutional use (school, church, park), provided that plants and related materials are maintained in a clean and orderly manner and that waste is disposed of appropriately; and
- f) beekeeping subject to the inspection and licensing requirements and limitations outlined in Section 906.

Section 3. Subsection 514.15 of the Richfield City Code relating to Additional Regulations in the Single-Family Residential District (R) is amended by adding a new subdivision 7 as follows:

Subd. 7. Beekeeping. Any property seeking to keep bees must comply with the additional requirements of Section 906 of this Code.

Section 4. Subsection 905.41 of the Richfield City Code relating to the maintenance of nondomestic animals, amphibians, reptiles and insects, is amended as follows:

Subd. 2. Maintenance of non-domestic creatures prohibited. Except as allowed in Section 906, All other living creatures not enumerated or covered in subdivision 1 are considered non-domestic creatures and the maintenance thereof is considered a nuisance and punishable pursuant to this part.

Section 5. A new Section 906 is inserted into the Richfield City Code as follows:

SECTION 906 – BEEKEEPING

906.01. – Definitions.

Subdivision 1. “Accredited institution” means an educational institution holding accredited status which has been licensed or registered by the Minnesota Office of Higher Education at the time the registrant obtained their certificate.

Subd. 2. “Apiary” means the AP assembly of one or more colonies of bees on a single lot.

Subd. 3. “Apiary site” means the lot upon which an apiary is located.

Subd. 4. “Beekeeper” means a person who owns or has charge of one or more colonies of honeybees or a person who owns or controls a lot on which a colony is located whether or not the person is intentionally keeping honeybees.

Subd. 5. “Beekeeping equipment” means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.

Subd. 6. “Colony” means an aggregate of honey bees consisting principally of workers, but having, when perfect, one queen and at times drones, brood, combs and honey.

Subd. 7. “Flyway barrier” means a barrier that raises the flight path of bees above six feet from the ground as they come and go from a hive.

Subd. 8. “Hive” means the receptacle inhabited by a colony.

Subd. 9. “Honey bee” means all life stages of the common domestic honey bee, *apis mellifera*. This definition does not include wasps, hornets, African subspecies or Africanized hybrids.

Subd. 10. “Nucleus colony” means a small quantity of honey bees with a queen housed in a smaller than usual hive box designed for a particular purpose, and containing no supers.

Subd. 11. “Registrant” means any registered beekeeper and any person who has applied for approval of a beekeeping registration.

Subd. 12. “Rooftop” means the uppermost section of a primary or accessory structure of at least one full story and at least twelve feet in height. Areas including but not limited to decks, patios and balconies shall not be considered a rooftop.

Subd. 13. “Super” means a box that holds the frames where bees will store the honey.

Subd. 14. “Swarming” means the process where a queen bee leaves a colony with a large group of worker bees in order to form a new honey bee colony.

Subd. 15. “Unusual aggressive behavior” means any instance in which unusual aggressive characteristics such as stinging or attacking without provocation occurs. Provocation is an act that an adult could reasonably expect may cause a bee to sting or attack.

906.03. – Purpose.

The purpose and intent of this Section is to permit and establish requirements for the keeping of honey bee colonies, hives, and equipment within the City and to ensure compliance with the requirements of this section. The City of Richfield recognizes that honey bees are an asset to our community, important in the pollination of plants and in the production of honey and other products.

906.05. – Beekeeping Limited.

No person shall keep, harbor, maintain or allow to be kept any hive or other facility for the housing of honeybees on or in any property within the City of Richfield without an approved registration unless otherwise exempted by subsection 906.09 or 906.13.

906.07. – Colony Location.

Subdivision 1. Hives cannot be located in the front yard and must be located a minimum of ten (10) feet from the rear or side property lines and 20 feet from public rights-of-way unless further restricted elsewhere in this Code. A corner lot shall be considered to have two front yards.

Subd. 2. Hives must be located a minimum of ten feet from any dwelling unit.

Subd. 3. Except as otherwise provided in this Section, in each instance where any part of a hive is kept within twenty-five feet of a lot line of the apiary site, a flyway barrier of at least six feet in height must be constructed and must comply with the following:

- (a) The flyway barrier may consist of a wall, fence, dense vegetation or a combination thereof, such that honey bees will fly over rather than through the material to reach the colony.
- (b) If a flyway barrier of dense vegetation is used, the initial planting may be four feet in height, so long as the vegetation reaches a height of at least six feet within two years of installation. Vegetation must be maintained so that it thrives and continues to meet these standards. If the vegetation dies or is not maintained so that it will comply, the vegetation must be replaced.
- (c) If the flyway barrier consists of a wall or fence, the materials must be decay resistant, and maintained in good condition.
- (d) The flyway barrier must continue parallel to the lot line of the apiary site for ten feet in both directions from the hive, or contain the hive or hives in an enclosure at least six feet in height.
- (e) A flyway barrier is not required if the hive is located on a rooftop.
- (f) Flyway barriers are subject to all other applicable City regulations, including, but not limited to, fence height limitations.

Subd. 4. Hives located on any rooftop are subject to annual inspection and permitting by the City. No colony shall be placed upon a rooftop until the Building Inspector or their designee has determined that the location poses

no health or safety risks and that it is structurally sound to hold a hive and associated equipment and activities. If the Building Inspector at any time determines that the hive and/or building conditions pose a risk to public health or safety, the deficiency must be repaired or removed by the Registrant within ten (10) days' written notice. If the deficiency is not repaired or removed, the hive must be removed, at the Registrant's sole expense, within fifteen (15) days of notice from the building inspector of the unsafe condition.

906.09. – Colony Density.

Subdivision 1. Every lot or parcel of land in the City shall be limited to the following number of colonies based on the size of the apiary site:

- (a) One half acre or smaller is allowed one colony;
- (b) More than one half acre to three quarters of an acre is allowed two colonies;
- (c) More than three quarter of an acre to one acre is allowed three colonies;
- (d) More than one acre to five acres is allowed four colonies;
- (e) More than five acres, there is no restriction on the number of colonies.

Subd. 2. If any beekeeper serves the community by removing a swarm or swarms of honeybees from locations where they are not desired, that person shall not be considered in violation of the colony density restrictions in this section if the following conditions are met:

- (a) The person temporarily houses the honeybees at an apiary site of a beekeeper registered with the City,
- (b) The bees are not kept for more than thirty days, and
- (c) The site remains in compliance with the other provisions of this section.

906.011. – Required Conditions.

Subdivision 1. Honey bee colonies shall be kept in hives with removable frames, which shall be kept in sound and useable condition.

Subd. 2. Each colony on the apiary site shall be provided with a convenient source of water which must be located within ten feet of each active colony.

Subd. 3. Materials from a hive such as wax combs or other materials that might encourage robbing by other bees shall be promptly disposed of in a sealed container or placed within a building or other bee and vermin proof enclosure.

Subd. 4. For each colony permitted to be maintained, there may also be maintained upon the same apiary lot, one nucleus colony in a hive structure not to exceed one standard nine and five-eighths (9-5/8) inch depth box, ten frame hive body with no supers.

Subd. 5. Beekeeping equipment must be maintained in good condition, including keeping the hives free of chipped and peeling paint if painted, and any unused equipment must be stored in an enclosed structure.

Subd. 6. Hives shall be continuously managed to provide adequate living space for their resident honeybees in order to prevent swarming.

Subd. 7. In any instance in which a colony exhibits unusual aggressive behavior, it shall be the duty of the beekeeper to promptly re-queen the colony.

906.13. – Registration Required.

Subdivision 1. The application for registration must be upon a form provided by the City. All required information must be complete.

Subd. 2. Each apiary site must apply for registration and receive approval prior to bringing any honeybees into the City.

Subd. 3. If the beekeeper relocates a hive or colony to a new apiary site, the beekeeper shall apply for an updated registration, prior to the relocation, on the form provided by the City.

Subd. 4. The beekeeping registration shall be valid until March 31 of each calendar year following initial issuance and must be renewed by the registrant prior to expiration each year by submitting a renewal form to the City on the form it provides.

Subd. 5. Upon receipt of an application for an initial or renewal registration, the City will send notice to all property owners within 100 feet of the property line of the parcel upon which the apiary site(s) is located. Any property owner who objects to the registration must submit objections in writing to the City Manager within ten (10) days of the date of the notice. If the City Manager receives any written objections relating to an application, the City Manager will act on the application. If a written objection relating to an initial registration application includes evidence that a property owner, or a person residing at the property, within the 100-foot notice area, has a verifiable, documented medical allergy to bees, the City Manager shall deny the application. Such basis for denial shall not apply to objections submitted related to a renewal application.

Subd. 6. Beekeeping training and education is required for the beekeeper prior to the issuance of the initial beekeeping permit by the City. At the time of application for registration, the beekeeper must submit a certificate of completion of a honeybee keeping course from an accredited Minnesota institution.

Subd. 7. The fees for the registration will be determined by the City Council in the City's fee schedule (Appendix D).

Subd. 8. The property must be in compliance with all other applicable City regulations in order to receive approval and renewal.

Subd. 9. If the required conditions outlined in section 906.11 are not maintained subsequent to issuance of a beekeeping permit, the permit may be revoked by the City Manager.

Subd. 10. Beekeepers operating in the City prior to the effective date of this Section will have until March 1, 2016 to apply for registration.

Subd. 11. The registration requirement under this subsection does not apply to The Woodlake Nature Center.

906.15. – Inspection.

Subdivision 1. Upon initial registration, annual renewal or any updated registration, each beekeeper must allow for an inspection of the site.

Subd. 2. Upon prior notice to the owner of the apiary site, City staff shall have the right to inspect any apiary.

Subd. 3. In the case of a complaint regarding the apiary, the apiary site may be inspected upon reasonable notice to the property owner and/or registered beekeeper.

906.17. – Appeal and Hearing Procedure.

Subdivision 1. Notice of denial, revocation or non-renewal must be made in writing to the registrant specifying the reason(s) for the action. The registrant may request, in writing, a hearing within fourteen (14) days of the date of the notification letter.

Subd 2. A hearing officer shall hold hearings on contested denials, revocations, and non-renewals. The hearing officer shall be a person appointed by the City. At the hearing, the applicant may speak on his or her behalf and may present witnesses and other evidence he or she deems necessary. Upon the conclusion of the hearing, the hearing officer shall issue a written decision that includes findings of fact. The City shall provide the registrant with a copy of the hearing officer's decision. The registrant may

appeal the hearing officer's decision to the Minnesota Court of Appeals by writ of certiorari.

Section 6. Effective Date. This Ordinance is effective as provided by Section 3.09 of the Richfield City Charter.

Adopted by the City Council of the City of Richfield, Minnesota this ____ day of _____, 2016.

By:

Debbie Goettel, Mayor

ATTEST:

Elizabeth VanHoose, City Clerk



STAFF REPORT NO. 7
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Jay Henthorne, Public Safety Director

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Public Safety Director
12/23/2015

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich
1/6/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the approval of the Continuing Agreement for 2016 between the Hennepin County Human Services and Public Health Department and the City of Richfield Police Department for continuing funds for a Police Cadet and/or Community Service Officer position and Joint Community Police Partnership (JCPP) training. The funds available for 2016 will be \$20,000.

EXECUTIVE SUMMARY:

Hennepin County has presented an agreement on behalf of the Hennepin County Human Services and Public Health Department to furnish a Police Cadet and/or Community Service Officer (CSO) position for the City of Richfield and its Police Department along with multicultural training for department personnel. The agreement is a continuation of the 2015 agreement and is for the period beginning January 1, 2016, and ending December 31, 2016. The funding from Hennepin County will not exceed \$20,000 for 2016.

RECOMMENDED ACTION:

By Motion: Approve the 2016 Agreement between the Hennepin County Human Services and Public Health Department and the City of Richfield Police Department for continuing funds for a Police Cadet and/or Community Service Officer position and JCPP training. The funds available for 2016 will be \$20,000.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The Richfield Police Department has, in the past, hired a Police Cadet with the funding supplied by Hennepin County. The Department plans on hiring a Cadet and/or CSO this year, and will utilize the \$15,000 funds budgeted in the contract for the salary expenses. The remaining \$5,000 will be used to support the Joint Community Police Partnership program's meetings and trainings (Teen Academy, PMAC, Explorers) for the community.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- Hennepin County notified the City that they wished to renew the contract with the City of Richfield.
- The Public Safety/Police Department wishes to renew the contract with Hennepin County for the Joint Community Police Partnership program.

C. **CRITICAL TIMING ISSUES:**

The agreement must be signed for the Joint Community Police Partnership program to continue and for funding to be received.

D. **FINANCIAL IMPACT:**

- The total cost of this agreement shall not exceed twenty thousand dollars (\$20,000) to be paid by Hennepin County in accordance with the terms of the agreement.
- \$5,000 is to be used for JCPP programs.
- \$15,000 is to be used as salary expense for a Cadet and/or Community Service Officer.

E. **LEGAL CONSIDERATION:**

There are no legal considerations.

ALTERNATIVE RECOMMENDATION(S):

The Council could choose to not sign the contract which would make the agreement null and void with the County and the department would have to discontinue the JCPP program.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
□ 2016 JCPP Contract	Contract/Agreement

PERSONAL/PROFESSIONAL SERVICE AGREEMENT

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 ("COUNTY"), on behalf of the Hennepin County Human Services and Public Health Department, A-2300 Government Center, Minneapolis, Minnesota 55487, and City of Richfield, 6700 Portland Avenue South, Richfield, Minnesota 55423 ("CONTRACTOR").

The parties agree as follows:

1. **TERM AND COST OF THE AGREEMENT**

CONTRACTOR shall furnish services to COUNTY commencing January 1, 2016 and expiring December 31, 2016, unless cancelled or terminated earlier in accordance with the Default and Cancellation/Termination provisions of this Agreement.

The total cost of this Agreement, including all reimbursable expenses, shall not exceed Twenty-Thousand Dollars (\$20,000.00), as more fully described in Exhibit B, attached and incorporated by this reference.

2. **SERVICES TO BE PROVIDED**

CONTRACTOR shall provide implementation of the Joint Community Police Partnership (JCPP) Project, as more fully described in Exhibit A, attached and incorporated by this reference.

3. **PAYMENT FOR SERVICES**

Payment for services shall be made directly to CONTRACTOR after completion of the services and upon the presentation of a claim as provided by law governing COUNTY's payment of claims and/or invoices. CONTRACTOR shall submit monthly invoices for services rendered on forms which may be furnished by COUNTY. Payment shall be made within thirty-five (35) days from receipt of the invoice.

CONTRACTOR shall not provide services under this Agreement without receiving a purchase order or purchase order number supplied by COUNTY. All invoices shall display a Hennepin County purchase order number and be sent to the central invoice receiving address supplied by COUNTY.

4. **PROFESSIONAL CREDENTIALS**

INTENTIONALLY OMITTED

5. INDEPENDENT CONTRACTOR

CONTRACTOR shall select the means, method, and manner of performing the services. Nothing is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting CONTRACTOR as the agent, representative, or employee of COUNTY for any purpose. CONTRACTOR is and shall remain an independent contractor for all services performed under this Agreement. CONTRACTOR shall secure at its own expense all personnel required in performing services under this Agreement. CONTRACTOR's personnel and/or subcontractors engaged to perform any work or services required by this Agreement will have no contractual relationship with COUNTY and will not be considered employees of COUNTY. COUNTY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or Minnesota Statutes, chapter 176 (which may be referred to as the "Workers' Compensation Act"), on behalf of any personnel, including, without limitation, claims of discrimination against CONTRACTOR, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

6. NON-DISCRIMINATION

- A. In accordance with COUNTY's policies against discrimination, CONTRACTOR shall not exclude any person from full employment rights nor prohibit participation in or the benefits of any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin. No person who is protected by applicable federal or state laws against discrimination shall be subjected to discrimination.
- B. CONTRACTOR shall adhere to COUNTY's HIV/AIDS Policy which provides that no employee, applicant, or client shall be subjected to testing, removed from normal and customary status, or deprived of any rights, privileges, or freedoms because of his or her HIV/AIDS status except for clearly stated specific and compelling medical and/or public health reasons. CONTRACTOR shall establish the necessary policies concerning HIV/AIDS to assure that COUNTY clients in contracted programs and CONTRACTOR's employees in COUNTY-contracted programs are afforded the same treatment with regard to HIV/AIDS as persons directly employed or served by COUNTY.

7. INDEMNIFICATION

CONTRACTOR shall defend, indemnify, and hold harmless COUNTY, its present and former officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of CONTRACTOR to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of CONTRACTOR personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the Data provisions set forth in Section 10 below.

8. INSURANCE

CONTRACTOR warrants that it has a purchased insurance or self-insurance program.

9. DUTY TO NOTIFY

CONTRACTOR shall promptly notify COUNTY of any claim, action, cause of action or litigation brought against CONTRACTOR, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement. CONTRACTOR shall also notify COUNTY whenever CONTRACTOR has a reasonable basis for believing that CONTRACTOR and/or its employees, officers, agents or subcontractors, and/or COUNTY, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Agreement.

10. DATA

CONTRACTOR, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, which may include the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For clarification and not limitation, COUNTY hereby notifies CONTRACTOR that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. CONTRACTOR shall promptly notify COUNTY if CONTRACTOR becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA.

Classification of data as trade secret data will be determined pursuant to applicable law and, accordingly, merely labeling data as “trade secret” does not necessarily make it protected as such under any applicable law.

11. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes section 16C.05, subd. 5, COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONTRACTOR and involve transactions relating to this Agreement. CONTRACTOR shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its expiration, cancellation or termination.

12. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. CONTRACTOR binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements and obligations contained in the contract documents.
- B. CONTRACTOR shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of COUNTY. A consent to assign shall be subject to such conditions and provisions as COUNTY may deem necessary, accomplished by execution of a form prepared by COUNTY and signed by CONTRACTOR, the assignee and COUNTY. Permission to assign, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement.
- C. CONTRACTOR shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of COUNTY. Permission to subcontract, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement. Further, CONTRACTOR shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CONTRACTOR and each subcontractor shall require that the subcontractor's services be performed in accordance with this Agreement. CONTRACTOR shall make contracts between CONTRACTOR and subcontractors available upon request. For clarification and not limitation of Section 14E, none of the following constitutes assent by COUNTY to a contract between CONTRACTOR and a subcontractor, or a waiver or release by COUNTY of CONTRACTOR's full compliance with the requirements of this Section: (1) COUNTY's request or lack of request for contracts between CONTRACTOR and subcontractors; (2) COUNTY's review, extent of review or

lack of review of any such contracts; or (3) COUNTY's statements or actions or omissions regarding such contracts.

- D. As required by Minnesota Statutes section 471.425, subd. 4a, CONTRACTOR shall pay any subcontractor within ten (10) days of CONTRACTOR's receipt of payment from COUNTY for undisputed services provided by the subcontractor. CONTRACTOR shall pay interest of 1½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, CONTRACTOR shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including any attorney's fees, incurred in bringing the action.

13. MERGER AND MODIFICATION

- A. The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
- B. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. Except as expressly provided, the substantive legal terms contained in this Agreement including but not limited to Indemnification, Insurance, Merger and Modification, Default and Cancellation/Termination or Minnesota Law Governs may not be altered, varied, modified or waived by any change order, implementation plan, scope of work, development specification or other development process or document.

14. DEFAULT AND CANCELLATION/TERMINATION

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement, fails to administer the work as to endanger the performance of the Agreement or otherwise breaches or fails to comply with any of the terms of this Agreement, it shall be in default. Unless CONTRACTOR's default is excused in writing by COUNTY, COUNTY may upon written notice immediately cancel or terminate this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for COUNTY to delay payment until CONTRACTOR's compliance. In the event of a decision to withhold payment, COUNTY shall furnish prior written notice to CONTRACTOR.

- B. Upon cancellation or termination of this Agreement:
1. At the discretion of COUNTY and as specified in writing by the Contract Administrator, CONTRACTOR shall deliver to the Contract Administrator copies of all writings so specified by COUNTY and prepared by CONTRACTOR in accordance with this Agreement. The term "writings" is defined as any of the following that was created by CONTRACTOR pursuant to this Agreement:

Handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording any form of communication or representation, including electronic media, email, letters, works, pictures, drawings, sounds, or symbols, or combinations thereof.
 2. COUNTY shall have full ownership and control of all such writings. CONTRACTOR shall have the right to retain copies of the writings. However, CONTRACTOR shall not, without the prior written consent of COUNTY, use these writings for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such writings; and shall not do anything which in the opinion of COUNTY would affect COUNTY's ownership and/or control of such writings.
- C. Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR shall remain liable to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by CONTRACTOR. Upon notice to CONTRACTOR of the claimed breach and the amount of the claimed damage, COUNTY may withhold any payments to CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due COUNTY from CONTRACTOR is determined. Following notice from COUNTY of the claimed breach and damage, CONTRACTOR and COUNTY shall attempt to resolve the dispute in good faith.
- D. The above remedies shall be in addition to any other right or remedy available to COUNTY under this Agreement, law, statute, rule, and/or equity.
- E. COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- F. This Agreement may be canceled/terminated with or without cause by either party upon thirty (30) day written notice.

15. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement do survive such term, cancellation or termination. Such provisions include but are not limited to: SERVICES TO BE PROVIDED (as to ownership of property); INDEPENDENT CONTRACTOR; INDEMNIFICATION; INSURANCE; DUTY TO NOTIFY; DATA; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION/TERMINATION; MEDIA OUTREACH; and MINNESOTA LAW GOVERNS.

16. CONTRACT ADMINISTRATION

In order to coordinate the services of CONTRACTOR with the activities of the Initial Contact and Assessment Area so as to accomplish the purposes of this Agreement, Monique Drier, JCPP Supervisor, or successor ("Contract Administrator"), shall manage this Agreement on behalf of COUNTY and serve as liaison between COUNTY and CONTRACTOR.

17. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. CONTRACTOR shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. If the source or partial source of funds for payment of services under this Agreement is federal, state or other grant monies, CONTRACTOR shall comply with all applicable conditions of the specific referenced or attached grant.
- C. CONTRACTOR certifies that it is not prohibited from doing business with either the federal government or the state of Minnesota as a result of debarment or suspension proceedings.

18. PAPER RECYCLING

COUNTY encourages CONTRACTOR to develop and implement an office paper and newsprint recycling program.

19. NOTICES

Unless the parties otherwise agree in writing, any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to COUNTY shall be sent to the County Administrator with a copy to the originating COUNTY department at the address given in the opening paragraph of this Agreement. Notice to CONTRACTOR shall be sent to the address stated in the opening paragraph of this Agreement or to the address stated in CONTRACTOR's Form W-9 provided to COUNTY.

20. CONFLICT OF INTEREST

CONTRACTOR affirms that to the best of CONTRACTOR's knowledge, CONTRACTOR's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. Should any conflict or potential conflict of interest become known to CONTRACTOR, CONTRACTOR shall immediately notify COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and advise COUNTY whether CONTRACTOR will or will not resign from the other engagement or representation.

21. MEDIA OUTREACH

CONTRACTOR shall notify Hennepin County Administration, or their designees, prior to publication, release or occurrence of any Outreach (as defined below). The parties shall coordinate to produce collaborative and mutually acceptable Outreach. For clarification and not limitation, all Outreach shall be approved by COUNTY prior to publication or release. As used herein, the term "Outreach" shall mean all media, social media, news releases, external facing communications, advertising, marketing, promotions, client lists, civic/community events or opportunities and/or other forms of outreach created by, or on behalf of, CONTRACTOR (i) that reference or otherwise use the term "Hennepin County," or any derivative thereof; or (ii) that directly or indirectly relate to, reference or concern the County of Hennepin, this Agreement, the services performed hereunder or COUNTY personnel, including but not limited to COUNTY employees and elected officials.

22. MINNESOTA LAWS GOVERN

The laws of the state of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, state of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the state of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

23. COOPERATIVE PURCHASING

At the time of this Agreement: 1) Hennepin County is a signature party to the Joint Powers Purchasing Agreement (Agreement No. A131396) (the "JPA"); 2) the Minnesota Counties of Anoka, Carver, Dakota, Olmsted, Ramsey, Scott and Washington are signatories to the JPA ("Cooperative Members"); 3) if agreed upon pursuant to a separate agreement between CONTRACTOR and any Cooperative Member, the JPA allows a Cooperative Member, subject to the terms of the JPA, to purchase the same or substantially similar services based upon terms that are the same or substantially similar

to those set forth in this Agreement including but not limited to price/cost; and 4) COUNTY shall have no obligation, liability or responsibility for any order or purchase made under the contract between a Cooperative Member and CONTRACTOR.

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COUNTY BOARD AUTHORIZATION

Reviewed by the County
Attorney's Office

COUNTY OF HENNEPIN
STATE OF MINNESOTA

By: _____
Chair of Its County Board

Date: _____

ATTEST: _____
Deputy/Clerk of County Board

Date: _____

And: _____
Assistant County Administrator

Date: _____

CITY OF RICHFIELD

By: _____

Its: _____

And: _____

Its: _____

CITY represents and warrants that the person who executed this contract is authorized to do so pursuant to applicable law and that any other applicable requirements have been met.

EXHIBIT A: CONTRACTED SERVICES

The Joint Community Police Partnership (JCPP) is a collaborative effort of the cities of St. Louis Park, Richfield, Hopkins, Bloomington, Brooklyn Park, Brooklyn Center and Hennepin County. The mission of the JCPP is to enhance communication and understanding between law enforcement and multicultural residents of these cities. The JCPP includes training of officers regarding diverse cultures, community engagement, and community outreach by community liaisons embedded in the police department. The goal of the JCPP is to alleviate conflict in culturally diverse communities by working directly with community members and law enforcement. The JCPP collaborates with law enforcement to assist in the recruitment, selection and training of police officers; as well as cadets, Community Service Officers (CSO), Reserves and Explorers.

As part of its collaboration with JCPP, CONTRACTOR will provide the following:

A. LAW ENFORCEMENT SELECTION AND TRAINING

1. **SELECTION:** CONTRACTOR shall conduct recruitment, interviewing, testing and selection of cadets, CSOs, Reserves, and/or Explorers with a goal of expanding representation of diverse communities in law enforcement. Candidates must pass police screening and background checks as necessary.
2. **TRAINING:** CONTRACTOR shall provide supervision, support, and training of selected cadets, CSOs, Reserves, and Explorers in its police department. Training and educational opportunities will be in conformance with police department rules and procedures. CONTRACTOR's police department will coordinate the training of the participants in conjunction with the JCPP. Participants will complete relevant law enforcement training under the direct supervision of police and academic representatives. Any transcripts, enrollment records, and performance reviews by supervising police officers will be provided upon request. Any cadets will train for up to twenty (20) hours per week and maintain acceptable academic performance in post-secondary law enforcement education.

B. POLICE COMMUNITY OUTREACH

CONTRACTOR's police department will participate in outreach activities including community dialogues, culturally specific community events, New American Academies, and Youth/Teen Academies.

EXHIBIT B: FINANCIAL INFORMATION

CITY OF RICHFIELD
1/1/16 – 12/31/16

Budget Category	Amount
1. Cadet/Community Service Officer Salary	\$15,000
2. Additional Miscellaneous Training Dollars & Expenses	\$5,000
TOTAL	\$20,000

CONTRACTOR agrees to match this funding by an equal amount or as closely as possible to the amounts listed in the above-referenced budget.



STAFF REPORT NO. 8
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Betsy Osborn, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Public Safety Director
1/5/2016

OTHER DEPARTMENT REVIEW: Mary Tietjen, City Attorney

CITY MANAGER REVIEW: Steven L. Devich
1/6/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the approval of the continuation of the agreement with the City of Bloomington for the provision of public health services for the City of Richfield for the year 2016.

EXECUTIVE SUMMARY:

The City of Richfield has had a public health nursing contract with the City of Bloomington to provide public health services on Richfield's behalf for over 30 years. This is our 2016 contractual agreement with Bloomington that requires City Council approval and reflects an approximate 3.5% increase in 2016's contract amount over the 2015 contract amount.

RECOMMENDED ACTION:

By motion: Approve the continuation of the agreement with the City of Bloomington for the provision of public health services for the City of Richfield for the year 2016.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

In 1977, the State of Minnesota enacted the Community Health Services Act which transferred the responsibility for the administration of public health programs to local jurisdictions. The State also provided funds for the program and encouraged local jurisdictions to increase the efficiency of their programs by grouping together whenever it made sense to do so. Richfield entered into a contractual agreement with Bloomington at that time and the program has been administered under a contract with them since that time. The Act was revised in 2003 and is now referred to as the Local Public Health Act.

The contract amount for providing public health services in 2016 reflects an approximate 3.5% increase over the 2015 contract amount. The contract amount for 2016 is \$235,250 with the 2015 contract amount having been \$226,202.

In 2004, changes were made to the Public Health Act at the State level to make reporting, accountability and recordkeeping more efficient. Those changes also "regrouped" a large number of funding sources into one, which gives more personalization of the funds for the best specific use of dollars within the community to be used in conjunction with subsidy guidelines. It is now referred to as the Local Public Health subsidy.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The City of Bloomington has sufficient resources to provide a professional level of public health services to Richfield residents. Annual evaluations of their services has shown that they are providing effective services in a very cost efficient manner and that Richfield residents are very satisfied.

C. CRITICAL TIMING ISSUES:

There are no critical timing issues.

D. FINANCIAL IMPACT:

There is no financial impact.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the contents of the contract and has approved of it.

ALTERNATIVE RECOMMENDATION(S):

The Council could decide to have Richfield provide its own public health nursing services. The costs of hiring the nursing staff necessary to provide the same level of services and administrative support would be more than our current expenditures and would require a significant increase.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
Public Health Nursing Contract with Bloomington	Contract/Agreement

**AGREEMENT BETWEEN
THE CITIES OF BLOOMINGTON AND RICHFIELD
TO PROVIDE LOCAL PUBLIC HEALTH SERVICES**

THIS AGREEMENT is made this _____ day of _____, 201____, between the City of Bloomington, acting through its Public Health Division, a Minnesota municipal corporation, located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (hereinafter referred to as "Bloomington"), and the City of Richfield, a Minnesota municipal corporation, located at 6700 Portland Avenue, Richfield, Minnesota 55423 (hereinafter referred to as "Richfield").

WITNESSETH:

WHEREAS, Bloomington warrants and represents that its Division of Public Health is a duly certified public health agency operating in accordance with all applicable federal and state requirements; and

WHEREAS, Bloomington provides local public health services, including, but not limited to public health nursing services (including home visits), public health clinics, health education, health promotion services, disease prevention and control, health planning, and program administration; and

WHEREAS, Richfield wishes to promote, support, and maintain the health of its residents by providing local public health services such as health education, communicable disease programs, public health nursing services, health assessment, counseling, teaching, and evaluation in the community, home and clinic setting at a nominal fee to those making use of such services, and to contract with Bloomington to provide such services to residents of Richfield; and

WHEREAS, the governing bodies of Bloomington and Richfield are authorized by Minnesota Statutes, Section 145A.04, Subdivision 5, and by Minnesota Statutes, Section 471.59, Subdivision 10, to provide local public health services and to enter into agreements with each other for the provision of local public health services by Bloomington to residents of Richfield; and

WHEREAS, through this contractual arrangement the provision of local public health services will enable Richfield to document progress toward the achievement of statewide outcomes, as stated in Minnesota Statutes, Section 145A.06, Subdivision 5a.

NOW, THEREFORE, in consideration of the terms and conditions expressed herein, the

parties agree as follows:

I. TERM OF AGREEMENT

A. The term of this Agreement shall be from January 1, 2016, to December 31, 2016, subject to termination as provided in Article V.

II. DUTIES OF THE PARTIES

A. Bloomington agrees to provide residents of Richfield with local public health services (hereinafter called "Public Health Services"), which includes activities designed to protect and promote the health of the general population within a community health service area by emphasizing the prevention of disease, injury, disability, and preventable death through the promotion of effective coordination and use of community resources, and by extending Public Health Services into the community.

B. Bloomington agrees to provide Public Health Services to the residents of Richfield utilizing the same quality and kind of personnel, equipment and facilities as Public Health Services are provided and rendered to residents of Bloomington.

C. Bloomington shall provide the Public Health Services pursuant hereto on a confidential basis, using capable, trained professionals.

D. All Public Health Services to be rendered hereunder by Bloomington shall be rendered pursuant to and subject to public health policies, rules, and procedures now or hereafter, from time to time, adopted by the Bloomington City Council, and in full compliance with all applicable state and federal laws, provided, however, that (i) no policy, rule, or procedure hereafter adopted by the Bloomington City Council shall in any way affect, modify, or change the obligations, duties, liabilities, or rights of the parties hereto as set out in this Agreement, or reduce or detract from the kind, quality, and quantity of Public Health Services to be provided hereunder by Bloomington to residents of Richfield, and (ii) all such policies, rules and procedures shall be uniformly applied to all persons receiving Public Health Services.

E. It shall be the sole responsibility of Bloomington to determine the qualifications, functions, training, and performance standards for all personnel rendering Public Health Services under this Agreement.

F. Bloomington will communicate with Richfield relative to Public Health Services to be performed hereunder, in the form of reports, conferences, or consultations, as Richfield shall request. All reports relating to the provision of Public Health Services that are given by Bloomington to the Bloomington City Council or to the City Manager during the term of this

Agreement shall also be given to Richfield.

G. Bloomington also agrees to send to Richfield an annual report describing the Public Health Services performed pursuant to this Agreement. Said report shall be in such detail and form as Richfield may reasonably request. Also, at Richfield's request, made not more than two (2) times during the term of this Agreement, responsible administrative officers of Bloomington's Division of Public Health shall attend meetings of the Richfield City Council, or appropriate board or commission, to answer questions and give further information relative to the activities performed and Public Health Services rendered under this Agreement.

H. Bloomington will also provide services to Richfield for Title V Maternal Child Health (MCH) and Temporary Assistance to Needy Families (TANF) to qualifying women, infants, children and adolescents. Richfield agrees to assign its rights to Minnesota Department of Health (MDH) funding provided for the MCH and TANF programs for fiscal year 2016 to Bloomington. Bloomington will complete all required services, reports and documentation for these programs and will directly invoice MDH for the MCH and TANF services that Bloomington provides to Richfield residents.

I. Bloomington and Richfield understand and agree that each shall apply and qualify, independently and separately, for any and all grants, matching funds, and/or payments of all kind from state, federal, and other governmental bodies relating to, or for the provision of, any or all of the Public Health Services. Except as agreed to herein, any and all such grants, matching funds, and payments shall belong to the recipient and be used and applied as the recipient thereof shall determine, without regard to this Agreement.

J. Bloomington hereby agrees to maintain in force its present policy of commercial general liability insurance in compliance with Minnesota Statutes, Section 466, and professional liability coverage in the amount of at least \$1,500,000 per occurrence for the term of this Agreement. Said policy shall be with an insurance company authorized to do business in Minnesota. If requested, Bloomington will provide a certificate of insurance evidencing such coverage. Richfield shall be named as an additional insured on Bloomington's commercial general liability insurance only.

K. Bloomington shall further require medical malpractice insurance coverage by its physicians and other licensed professionals with whom Bloomington has a contract for professional services.

L. To the extent allowed by law, the parties shall defend, indemnify and hold each other and their officials, employees and agents harmless from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the other's (including officials, agents or employees) performance of the duties

required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, diseases or death or to injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of the acting party.

M. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Bloomington's staff as the agents, representatives or employees of Richfield for any purpose in any manner whatsoever. Bloomington and its staff are to be and shall remain an independent contractor with respect to all services performed under this Agreement. Bloomington represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of Bloomington or other persons, while engaged in the performance of any work or services required under this Agreement, shall not be considered employees of Richfield, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against Bloomington, its officials, agents, contractors or employees shall in no way be the responsibility of Richfield; and Bloomington shall defend, indemnify and hold Richfield, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Bloomington personnel shall not be entitled to any compensation, rights or benefits of any kind whatsoever from Richfield, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

N. The parties agree to comply with the Minnesota State Human Rights Act, Minnesota Statutes, Chapter 363A, as amended.

O. Bloomington agrees that Richfield will own and have the right to use, reproduce and apply as it desires, any data, reports, analyses and materials which are collected or developed by Bloomington or anyone acting on behalf of Bloomington as a result of this Agreement.

P. All notices, reports, or demands required or permitted to be given under this Agreement shall be in writing and shall be deemed to be given when delivered personally to an officer of the party to which notice is being given, or when deposited in the United States mail in a sealed envelope, with registered or certified mail, postage prepaid thereon, addressed to the parties at the following addresses:

To Bloomington: 1800 West Old Shakopee Road
Bloomington, Minnesota 55431
Attention: City Manager

To Richfield: 6700 Portland Avenue South
Richfield, Minnesota 55423
Attention: City Manager

Such addresses may be changed by either party upon notice to the other party given as herein provided.

III. PAYMENT

A. Richfield agrees to pay Bloomington for Public Health Services provided pursuant to this Agreement according to the following terms:

1. The annual sum of TWO HUNDRED THIRTY FIVE THOUSAND TWO HUNDRED FIFTY DOLLARS AND NO/100 (\$235,250.00) shall be paid in quarterly installments of FIFTY EIGHT THOUSAND EIGHT HUNDRED TWELVE DOLLARS AND 50/100 (\$58,812.50) to Bloomington within fifteen (15) days of the receipt by Richfield of the statements to be given pursuant to Article II, Paragraph A.2 hereof, subject, however, to the provisions of Article II, Paragraph A.3 hereof.
2. On April 15, July 15, and October 15, 2016 and on January 15, 2017, Bloomington shall send Richfield a statement, covering the period of three (3) calendar months preceding the month in which the statement is given.
3. Should any dispute arise over this Agreement, Richfield shall pay for any undisputed charges for the previous three (3) month period when due. Disputed amounts will be addressed by both parties. If no agreeable solution is reached, the dispute will be handled pursuant to Article IV, Paragraph H.

IV. GENERAL PROVISIONS

A. Entire Agreement. This Agreement represents the entire Agreement between the parties and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof. Amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement must be in writing and signed by both parties.

B. Americans With Disabilities Act. The parties agree to comply with the Americans

With Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The parties agree to hold harmless and indemnify the other from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by Bloomington. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities. The parties have designated coordinators to facilitate compliance with the Americans with Disabilities Act of 1990, as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.

C. Non-Assignment. The parties agree that this Agreement shall not be assignable except at the written consent of both parties.

D. Minnesota Government Data Practices Act. The parties will comply with all applicable provisions of the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes, as amended.

E. Applicable Laws. This Agreement shall be interpreted using the laws of the State of Minnesota. The parties agree to comply with all applicable local, state and federal laws, rules, regulations and ordinances in the performance of the duties of this Agreement.

F. Assignment. This Agreement shall not be assignable except with the written consent of the parties.

G. Examination of Documents. The books, records, documents, and accounting procedures of Bloomington, relevant to this Agreement, are subject to examination by Richfield, and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5.

H. Mediation. The parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation. The mediation shall be conducted through the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.

I. Payment of Subcontractors. Bloomington agrees that it must pay any subcontractor within ten (10) days of the prime contractor's receipt of payment from the

municipality for undisputed services provided by the subcontractor. Bloomington agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorneys fees, incurred in bringing the action.

J. Adherence to City Policies. Bloomington agrees, as a condition of being awarded this Agreement, to require each of its agents, officers and employees to abide by Richfield's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City of Richfield property at all times while performing duties pursuant to this Agreement. Bloomington agrees and understands that a violation of any of these policies or rules constitutes a breach of the Agreement and sufficient grounds for immediate termination of the Agreement by Richfield.

K. Severability. If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable such decision shall not affect the validity of any remaining terms or conditions in this Agreement.

L. Signatory. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

V. TERMINATION

Either party may terminate this Agreement for any reason upon giving one hundred twenty (120) days' advanced written notice to the other party. Upon such termination, all obligations and liabilities of the parties hereunder shall cease and terminate, except the provisions of Article II, Paragraphs J and K listed above shall continue and survive such termination. Also, in the event of termination pursuant hereto, the quarterly payment next due shall be prorated and paid for only the period ended on the date of termination, and Bloomington shall send to Richfield, within thirty (30) days after such termination, a report in the form of, and in lieu of, the annual report required by Article II, Paragraph G hereto, and Richfield shall pay such reduced quarterly payment for the period ended on the date of termination, within fifteen (15) days after receipt of report.

The parties reserve the right to cancel this Agreement at any time in event of default or violation by the other party of any provision of this Agreement. The parties may take whatever action at law or in equity that may appear necessary or desirable to collect damages arising from a default or violation or to enforce performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their corporate seal to be affixed hereto the day and year first above written.

CITY OF BLOOMINGTON:

Dated: _____

By: _____
Its Mayor

Dated: _____

By: _____
Its City Manager

Reviewed and approved by the City Attorney.

City Attorney

CITY OF RICHFIELD:

Dated: _____

By: _____
Its Mayor

Dated: _____

By: _____
Its City Manager



STAFF REPORT NO. 9
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Steven L. Devich, City Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich
1/6/2016

OTHER DEPARTMENT REVIEW: Mary Tietjen, City Attorney

CITY MANAGER REVIEW: Steven L. Devich
1/6/2016

ITEM FOR COUNCIL CONSIDERATION:

Public hearing regarding the consideration of a resolution and the first reading of an ordinance regarding the granting of a cable communications franchise with CenturyLink for the City of Richfield.

EXECUTIVE SUMMARY:

In this spring of 2015, the City of Richfield, along with the other member cities of the Southwest Suburban Cable Commission (SWSCC), received an application from CenturyLink to provide cable communications services to the City of Richfield. The City, in conjunction with the SWSCC, followed all applicable law in accepting and processing the application. Through that process it was found that CenturyLink was legally, technically and financially qualified to provide cable communications services to the City. Furthermore, staff of the SWSCC was directed to enter into negotiations with Century Link to ascertain if mutually agreeable terms for such a franchise could be reached. Those negotiations have been completed and resulted in a proposed franchise agreement between the cities of the SWSCC and CenturyLink.

In addition, on October 28, 2015, the SWSCC voted on the terms of the tentative franchise agreement with CenturyLink and approved the agreement by a unanimous vote.

This evening, the terms of that franchise agreement are before the City Council for consideration as contained in the proposed resolution Regarding an Ordinance Granting a Competitive Cable Franchise for Qwest Broadband Services, Inc., d/b/a CenturyLink.

Brian Grogan, who is the legal counsel and administrator of the SWSCC, will make a presentation to the City Council regarding the terms of the proposed franchise and be available to answer any questions that Council Members or the public may have concerning this matter.

An attached memo from Mr. Groan dated December 21, 2015 further details this application process and the action under consideration.

RECOMMENDED ACTION:

Conduct and continue the public hearing to January 26, 2016 and by motion:

- **Approve a resolution regarding the granting of a cable communications franchise with CenturyLink for the City of Richfield; and**
- **Approve first reading of an ordinance granting a cable television franchise to Qwest Broadband**

- Services, Inc. d/b/a CenturyLink; and
- Schedule second reading of the ordinance for January 26, 2016.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

On March 24, 2015, the City Council considered a request from CenturyLink to grant a cable communications franchise to provide such services to the City. Pursuant to this request, the City initiated the process proscribed by Minnesota Statutes 238.081 by publishing a Notice of Intent to Franchise in the Sun Current and mailed the Notice directly to the existing provider Comcast and the prospective applicant CenturyLink.

The process followed in consideration of this application is outlined in the Executive Summary.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The cable franchising process in Minnesota is provided for in MN Statutes Section 238.081. The City must follow the procedures and timelines as stated in the Statute.

C. CRITICAL TIMING ISSUES:

All of the procedural and legal considerations preliminary to consideration of granting this proposed franchise have been completed and the decision to grant or deny the franchise for Richfield now rests with the City Council.

D. FINANCIAL IMPACT:

None. CenturyLink has submitted a check for \$10,000 to the City to cover the costs incurred by the City for this application process.

E. LEGAL CONSIDERATION:

Brian Grogan, the attorney for the SWSCC, has outlined the process to be followed in responding to this franchise request and has guided the City in this process according to all applicable law.

ALTERNATIVE RECOMMENDATION(S):

None.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Brian Grogan, Attorney for the SWSCC

ATTACHMENTS:

Description	Type
❑ Resolution	Resolution Letter
❑ Franchise Ordinance	Cover Memo
❑ SWSS Memo and Findings of Fact	Backup Material

CITY OF RICHFIELD, MINNESOTA

RESOLUTION NO. _____

**REGARDING AN ORDINANCE GRANTING A COMPETITIVE CABLE FRANCHISE
FOR QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK**

RECITALS:

WHEREAS, the City of Richfield, Minnesota makes the following FINDINGS OF FACT:

1. In October 2014, Qwest Broadband Services, Inc., d/b/a CenturyLink, Inc. ("CenturyLink") requested that the City of Richfield, Minnesota ("City") initiate proceedings to consider awarding it a franchise to provide cable communications services in the City ("Service Territory").
2. Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc. ("Comcast") holds a non-exclusive cable communications franchise for the Service Territory ("Comcast Franchise").
3. The Comcast Franchise, which the City last renewed in August 2012, is currently the only cable communications franchise for the Service Territory.
4. The monopoly held by a sole cable communication provider in a particular market is a barrier to entry for additional providers, which does not have a captive market but must instead "win" every subscriber.¹
5. The presence of a second cable operator in a market improves the quality of service offerings and drives down prices by approximately 15%.²
6. On April 2 and April 9, 2015, the City published a Notice of Intent to Franchise a Cable Communications System ("Notice") in the Sun Current, a newspaper of general circulation in the Service Territory.
7. The Notice indicated that the City was soliciting franchise applications and provided information regarding the application process, including that applications were required to be submitted on or before April 24, 2015 and that a public hearing to hear proposals from applicants would be held May 12, 2015 at 7:00 PM.
8. The City also mailed copies of the Notice and application materials to CenturyLink and Comcast.³

¹ *In the Matter of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 05-311, at ¶ 138 (Rel. Mar. 5, 2007) ("621 Order").

² *Id.* at ¶¶ 2, 50.

9. On April 24, 2015, the City received an application from CenturyLink (the “CenturyLink Application”). The City did not receive any other applications.
10. As provided by the Notice, on May 12, 2015 the City held a public hearing during the City Council’s regularly scheduled meeting to consider CenturyLink’s application and qualifications.
11. On May 4, 2015, Comcast submitted a letter to the City setting forth its position regarding the CenturyLink Application (“Comcast Letter”).⁴
12. The Comcast Letter expresses concern about how CenturyLink’s proposal compared to particular provisions of the existing Comcast Franchise.⁵
13. The Comcast Letter also summarizes Comcast’s position regarding build-out requirements and other proposed terms related to competition in the cable industry.⁶
14. During the hearing, CenturyLink presented its proposal and all other interested parties were provided an opportunity to speak and present information to the City Council regarding the CenturyLink Application.
15. Following the hearing, the law firm of Moss & Barnett, a Professional Association prepared a report, dated June 1, 2015 (“Franchise Report”), reviewing and analyzing the City’s franchising procedures, the CenturyLink Application and other information provided by CenturyLink in connection with the May 18, 2015 public hearing.⁷
16. The Franchise Report identifies and discusses federal and state legal requirements relevant to the City’s consideration of the CenturyLink Application, including laws pertaining to franchising procedures and competition between providers.⁸
17. The Franchise Report also analyzes information provided by CenturyLink to establish its qualifications to operate a cable communications franchise in the Service Territory.⁹
18. At its meeting on October 28, 2015, the Southwest Suburban Cable Commission (“Commission”) considered the Franchise Report along with the information and documentation it had received regarding the CenturyLink Application, and adopted Resolution 2015-1 finding and concluding that the CenturyLink Application complied with the requirements of Minn. Stat. § 238.081 and that CenturyLink is legally,

³ Notice by the City of Richfield, Minnesota of Its Intent to Consider An Application for a Franchise and Request for Proposals - Official Application Form

⁴ See May 4, 2015 letter from Emmett Coleman to Brian Grogan, Franchise Administrator of the Southwest Suburban Cable Commission regarding CenturyLink Video Franchise Application.

⁵ *Id.* at 2.

⁶ *Id.* at 1-2.

⁷ Report to the Southwest Suburban Cable Commission Regarding Qwest Broadband Services, Inc. d/b/a/ CenturyLink – Proposal for a Cable Communication Franchise, June 1, 2015.

⁸ Franchise Report at 2-9.

⁹ *Id.* at 11-12.

technically, and financially qualified to operate a cable communications system within the Service Territory.

19. In Minnesota, both State and federal law govern the terms and conditions of an additional cable communications franchise in an already-franchised service area.¹⁰
20. The franchising authority may not grant an exclusive franchise or unreasonably refuse to award an additional competitive franchise.¹¹
21. The franchising authority must allow an applicant reasonable time to become capable of providing cable service to all households in the service area.¹²
22. The franchising authority may grant an additional franchise in an already-franchised service area if the terms and conditions of the additional franchise are not “more favorable or less burdensome than those in the existing franchise” regarding the area served, the PEG access requirements, and franchise fees.¹³
23. The additional franchise must also include, among other things, “a schedule showing . . . that the construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise.”¹⁴
24. In order to ensure that any additional franchise granted to CenturyLink would contain substantially similar service area, PEG access requirements, and franchise fees to the Comcast Franchise, the City used the Comcast Franchise as the base document for its negotiations.
25. On December 31, 2015, the City Council gave notice that it intended to introduce an ordinance granting a cable communications franchise to CenturyLink.
26. On January 12, 2016, the City Council introduced Ordinance No. _____, an Ordinance of the City of Richfield Granting a Cable Communications Franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink Franchise”).
27. Copies of the CenturyLink Franchise were made available to the public, including Comcast, on December 22, 2015.
28. The CenturyLink Franchise encompasses the same Service Territory encompassed by the Comcast Franchise.¹⁵
29. The franchise fees required by the CenturyLink Franchise are identical to those required by the Comcast Franchise.¹⁶

¹⁰ See 47 U.S.C. § 541(a)(1); Minn. Stat. §§ 238.08, .084; *see also* Franchise Report at 2-8.

¹¹ 47 U.S.C. § 541(a)(1).

¹² 47 U.S.C. § 541(a)(4).

¹³ Minn. Stat. § 238.08, subd. 1(b).

¹⁴ Minn. Stat. § 238.84, subd. 1(m).

¹⁵ CenturyLink Franchise § 2.4; Comcast Franchise § 2.4.

30. The PEG access requirements in the CenturyLink Franchise mandate certain obligations, such as HD channel capacity for all PEG channels that go beyond the commitments made in the Comcast franchise.¹⁷
31. The City recognizes that CenturyLink, which currently offers no cable communications services in the Service Territory, cannot justify a large initial deployment because it “realistically cannot count on acquiring a share of the market similar to Comcast’s share . . . [and] must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding.”¹⁸
32. The CenturyLink Franchise therefore requires CenturyLink’s initial deployment to be capable of serving at least 15% of the living units in the Service Territory within two years.
33. The CenturyLink Franchise permits the City to monitor CenturyLink’s progress and compliance with build-out requirements via quarterly meeting and accelerates the build-out schedule if CenturyLink has market success, with the goal and expectation that build-out will be substantially complete before the CenturyLink Franchise’s five-year term expires.¹⁹
34. During its regularly scheduled meeting on January 12, 2016, the City Council will hold a public hearing at which all interested parties are provided an opportunity to speak and present information regarding the proposed CenturyLink Franchise.

WHEREAS, the City has considered these facts and the cable-related needs and interests of the community:

NOW THEREFORE, the City Council for the City of Richfield, Minnesota hereby resolves as follows:

1. The foregoing findings are adopted as the official findings of the City Council and made a part of the official record.
2. The City has authority to adopt an ordinance granting a cable communications franchise to CenturyLink for the Service Territory.
3. The City may not unreasonably refuse to award a competitive cable communications franchise to CenturyLink.
4. The City and its residents will benefit from adoption of the CenturyLink Franchise, which will introduce facilities-based competition into the cable communications market in the Service Territory and thereby reduce costs to consumers and increase the quality and availability of services.

¹⁶ CenturyLink Franchise § 16.1; Comcast Franchise § 16.1.

¹⁷ CenturyLink Franchise § 7; Comcast Franchise § 7.

¹⁸ 621 Order at ¶ 35.

¹⁹ CenturyLink Franchise § 2.6.

5. CenturyLink is legally, technically, and financially qualified to operate a cable communications system in the Service Territory and has complied with all application requirements.
6. The City has complied with all franchise application requirements imposed by State and federal law, including those identified herein or in the Franchise Report.
7. The terms and conditions of the CenturyLink Franchise pertaining to service area, a PEG access requirement, and franchise fees are not more favorable or less burdensome than the corollary terms of the Comcast Franchise.
8. The CenturyLink Franchise's initial deployment requirement of 15% within two years and 5-year timeline for substantially completing build-out provides a reasonable period of time for CenturyLink to become capable of reaching full deployment and is therefore consistent with both State and federal law.
9. The Ordinance Granting a Cable Communications Franchise for Qwest Broadband Services, Inc., d/b/a CenturyLink is formally and finally adopted.
10. The City finds and concludes that its actions are appropriate, reasonable, and consistent in all respects with the mandates set forth in Chapter 238 of Minnesota Statutes and applicable provisions of federal law, including 47 U.S.C. § 541(a).

PASSED AND ADOPTED in regular session of the City Council of the City of Richfield, Minnesota this 12th day of January 2016.

Debbie Goettel, Mayor of the City of Richfield

ATTEST:

Elizabeth VanHoose, City Clerk

City of Richfield, Minnesota

Ordinance Granting a Cable Television Franchise

to

Qwest Broadband Services, Inc. d/b/a CenturyLink

January 12, 2016

Prepared by:

**BRIAN T. GROGAN, ESQ.
Moss & Barnett
A Professional Association
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
(612) 877-5340**

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ORDINANCE NO. _____

AN ORDINANCE GRANTING A FRANCHISE TO QWEST BROADBAND SERVICES, INC., D/B/A CENTURYLINK TO OPERATE AND MAINTAIN A CABLE SYSTEM AND PROVIDE CABLE SERVICES IN THE CITY OF RICHFIELD; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE SYSTEM AND CABLE SERVICES.

RECITALS

The City of Richfield, Minnesota (“City”) pursuant to applicable federal and state law is authorized to grant one or more nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits.

Qwest Broadband Services, Inc., d/b/a CenturyLink (“Grantee”) seeks a competitive cable television franchise with the City.

Negotiations between Grantee and the City have been completed in accordance with the guidelines established by the City Code, Minnesota Statutes Chapter 238 and the Cable Act (47 U.S.C. Section 546).

The City reviewed the legal, technical and financial qualifications of Grantee and, after a properly noticed public hearing, determined that it is in the best interest of the City and its residents to grant this competitive cable television franchise to Grantee.

NOW, THEREFORE, THE CITY OF RICHFIELD DOES ORDAIN that a franchise is hereby granted to Qwest Broadband Services, Inc. to operate and maintain a Cable System and provide Cable Services in the City upon the following terms and conditions:

**SECTION 1
DEFINITIONS**

For the purpose of this Franchise, the following, terms, phrases, words, derivations and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. In the event the meaning of any word or phrase not defined herein is uncertain, the definitions contained in applicable local, State or Federal law shall apply.

“Access Channels” means any channel or portion of a channel utilized for public, educational or governmental programming.

“Affiliate” shall mean any Person controlling, controlled by or under common control of Grantee.

“Applicable Laws” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable to Grantee by any governmental authority of competent jurisdiction.

“Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast and shall include the public, educational and governmental access channels. Basic Cable Service as defined herein shall be the definition set forth in 47 U.S.C. § 522(3).

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

“Cable Service” shall mean (a) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and, “other programming service” is information that a cable operator makes available to all Subscribers generally.

“Cable System” or “System” shall have the meaning specified for “Cable System” in the Cable Act. Unless otherwise specified, it shall in this document refer to the Cable System utilized by the Grantee in the City under this Franchise.

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC by regulation.

“City” shall mean the City of Richfield, a municipal corporation in the State of Minnesota.

“City Code” means the Municipal Code of the City of Richfield, Minnesota, as may be amended from time to time.

“Commission” means the Southwest Suburban Cable Communications Commission consisting of the cities of Edina, Eden Prairie, Hopkins, Minnetonka and Richfield, Minnesota.

“Connection” means the attachment of the Drop to the television set or Set Top Box of the Subscriber.

“Council” shall mean the governing body of the City.

“Day” unless otherwise specified shall mean a calendar day.

“Drop” shall mean the cable that connects the Subscriber terminal to the nearest feeder cable of the cable.

“Effective Date” shall mean March 1, 2016.

“Expanded Basic Service” means all Subscriber services other than Basic Cable Service provided by the Grantee covered by a regular monthly charge, but not including optional programming offered on a pay-per-channel or pay-per-view basis.

“FCC” means the Federal Communications Commission, or a designated representative.

“Franchise” shall mean the right granted by this Ordinance and conditioned as set forth herein.

“Franchise Area” means the entire geographic area within the City as it is now constituted or may in the future be constituted.

“Franchise Fee” shall mean the fee assessed by the City to Grantee, in consideration of Grantee’s right to operate the Cable System within the City’s Streets and rights of way, determined in amount as a percentage of Grantee’s Gross Revenues and limited to the maximum percentage allowed for such assessment by federal law. The term Franchise Fee does not include the exceptions noted in 47 U.S.C. §542(g)(2)(A-E).

“GAAP” means generally accepted accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”).

“Grantee” means Qwest Broadband Services, Inc., d/b/a CenturyLink.

“Gross Revenues” means any and all compensation in whatever form, from any source, directly or indirectly earned by Grantee or any Affiliate of Grantee or any other Person who would constitute a cable operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Service within the City. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for Cable Services including Basic Cable Service, any expanded tiers of Cable Service, optional premium or digital services; pay-per-view services; Pay Services, installation, disconnection, reconnection and change-in-service fees, Leased Access Channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by Grantee from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of Set Top Boxes or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenue from Interactive Services to the extent they are considered Cable Services under Applicable Law;

revenue from the sale or carriage of other Cable Services, revenues from home shopping and other revenue-sharing arrangements. Copyright fees or other license fees paid by Grantee shall not be subtracted from Gross Revenues for purposes of calculating Franchise Fees. Gross Revenues shall include revenue received by any entity other than Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees.

Gross Revenues shall not include any taxes on services furnished by Grantee, which taxes are imposed directly on a Subscriber or user by a city, county, state or other governmental unit, and collected by Grantee for such entity. The Franchise Fee is not such a tax. Gross Revenues shall not include amounts which cannot be collected by Grantee and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in Gross Revenues for the period in which they are collected. Gross Revenues shall not include payments for PEG Access capital support. The City acknowledges and accepts that Grantee shall maintain its books and records in accordance with GAAP.

“Interactive Services” are those services provided to Subscribers whereby the Subscriber either (a) both receives information consisting of either television or other signal and transmits signals generated by the Subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose or (b) transmits signals to any other location for any purpose.

“Living Unit” means a distinct address as tracked in the QC network inventory, used by CenturyLink to identify existing or potential Subscribers. This includes, but is not limited to, single family homes, multi-dwelling units (e.g., apartment buildings and condominiums) and business locations.

“Minnesota Cable Communications Act” means the provisions of Minnesota law governing the requirements for a cable television franchise as set forth in Minn. Stat. § 238, et. seq., as amended.

“Mosaic Channel” means a channel which displays miniaturized media screens and related information for a particular group of Channels with common themes. The Mosaic Channel serves as a navigation tool for Subscribers, which displays the group of Access Channels on a single Channel screen and also provides for easy navigation to a chosen Access Channel.

“Normal Business Hours” means those hours during which most similar businesses in City are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

“Normal Operating Conditions” means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate

increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

“Pay Service” means programming (such as certain on-demand movie channels or pay-per-view programs) offered individually to Subscribers on a per-channel, per-program or per-event basis.

“PEG” means public, educational and governmental.

“Person” means any natural person and all domestic and foreign corporations, closely-held corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, businesses, common law trusts, societies and/or any other legal entity.

“QC” means Qwest Corporation, wholly owned subsidiary of CenturyLink, Inc. and an Affiliate of Grantee.

“Qualified Living Unit” means a Living Unit which meets the minimum technical qualifications defined by Grantee for the provision of Cable Service. A Living Unit receiving a minimum of 25Mbps downstream will generally be capable of receiving Cable Service subject to Grantee performing certain network grooming and conditioning.

“Set Top Box” means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber, and by an appropriate Channel selector also permits a Subscriber to view all signals included in the Basic Cable Service tier delivered at designated converter dial locations.

“Street” shall mean the surface of and the space above and below any public Street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by City which shall, within its proper use and meaning in the sole opinion of City, entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, man-holes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a Cable System.

“Subscriber” means a Person who lawfully receives Cable Service from Grantee.

“Wireline MVPD” means a multichannel video programming distributor that utilizes the Streets to install cable or fiber and is engaged in the business of making available for purchase, by Subscribers, multiple Channels of video programming in the City.

SECTION 2 FRANCHISE

2.1 Grant of Franchise.

(a) The City hereby authorizes Grantee to occupy or use the City's Streets subject to: 1) the provisions of this non-exclusive Franchise to provide Cable Service within the City; and 2) all applicable provisions of the City Code. Said Franchise shall constitute both a right and an obligation to provide Cable Services as required by the provisions of this Franchise. Nothing in this Franchise shall be construed to prohibit Grantee from: (1) providing services other than Cable Services to the extent not prohibited by Applicable Law; or (2) challenging any exercise of the City's legislative or regulatory authority in an appropriate forum. The City hereby reserves all of its rights to regulate such other services to the extent not prohibited by Applicable Law and no provision herein shall be construed to limit or give up any right to regulate.

(b) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliated Entity of the Grantee involved in the offering of Cable Service in the City, or directly involved in the ownership, management or operation of the Cable System in the City, shall also comply with all obligations of this Franchise. However, the City and Grantee acknowledge that QC will be primarily responsible for the construction and installation of the facilities in the Rights-of-Way which will be utilized by Grantee to provide Cable Services. So long as QC does not provide Cable Service to Subscribers in the City, QC will not be subject to the terms and conditions contained in this Franchise. QC's installation and maintenance of facilities in the Rights-of-Way is governed by applicable local, state and federal law. To the extent Grantee constructs and installs facilities in the Rights-of-Way, such installation will be subject to the terms and conditions contained in this Franchise. Grantee is responsible for all provisions in this Franchise related to: 1) its offering of Cable Services in the City; and 2) the operation of the Cable System regardless of what entity owns or constructs the facilities used to provide the Cable Service. The City and Grantee agree that to the extent QC violates any applicable federal, state, or local laws, rules, and regulations, the City shall first seek compliance directly from QC. In the event, the City cannot resolve these violations or disputes with QC, then the City may look to Grantee to ensure such compliance. Failure by Grantee to ensure QC's or any other Affiliate's compliance with Applicable Laws, rules, and regulations, shall be deemed a material breach of this Franchise by Grantee.

2.2 Reservation of Authority. The Grantee specifically agrees to comply with the lawful provisions of the City Code and applicable regulations of the City. Subject to the police power exception below, in the event of a conflict between A) the lawful provisions of the City Code or applicable regulations of the City and B) this Franchise, the express provisions of this Franchise shall govern. Subject to express federal and state preemption, the material terms and conditions contained in this Franchise may not be unilaterally altered by the City through subsequent amendments to the City Code, ordinances or any regulation of City, except in the lawful exercise of City's police power. Grantee acknowledges that the City may modify its

regulatory policies by lawful exercise of the City's police powers throughout the term of this Franchise. Grantee agrees to comply with such lawful modifications to the City Code; however, Grantee reserves all rights it may have to challenge such modifications to the City Code whether arising in contract or at law. The City reserves all of its rights and defenses to such challenges whether arising in contract or at law. Nothing in this Franchise shall (A) abrogate the right of the City to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the City, or (C) be construed as a waiver or release of the rights of the City in and to the Streets.

2.3 Franchise Term. This Franchise shall be in effect for a term of five (5) years from the date of acceptance by Grantee, unless terminated sooner as hereinafter provided. Six (6) months prior to the expiration of the initial five (5) year term, if City determines that Grantee is in compliance with all other material terms of this Franchise including the build out obligations set forth in this Franchise as required by Applicable Law, the City shall have the unilateral right to extend the Franchise for an additional term of no less than five (5) years and no more than ten (10) years.

2.4 Franchise Area. The Grantee is hereby authorized to provide Cable Services over a Cable System within the jurisdictional boundaries of the City, including any areas annexed by the City during the term of this Franchise. The parties acknowledge that Grantee is not the first entrant into the wireline video market in the City. The Grantee acknowledges that the City desires wireline competition throughout the entire City so all residents may receive the benefits of competitive Cable Services. Grantee aspires to provide Cable Service to all households within the City by the end of the five year (5) term of this Franchise. Grantee agrees that its deployment of Cable Service in the City will be geographically dispersed throughout the City, and shall be made available to diverse residential neighborhoods of the City without discrimination.

2.5 Franchise Nonexclusive. The Franchise granted herein shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional franchises for a Cable System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Grantee other than as described in Section 17.17. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Grantee. Any additional cable franchise grants shall comply with Minn. Stat. Section 238.08 and any other applicable federal level playing field requirements.

2.6 Build Out.

(a) Initial build out. No later than the second anniversary of the Effective Date of this Franchise, Grantee shall be capable of serving a minimum of fifteen percent (15%) of the City's households with Cable Service; provided, however, Grantee will make its best efforts to complete such deployment within a shorter period of time. Grantee agrees that this initial minimum build-out commitment shall include a significant number of households below the median income in the City. City shall, upon written request of Grantee, provide detailed maps of such areas. Nothing in this Franchise shall restrict Grantee from serving additional households in the City with Cable Service.

(b) Quarterly Meetings. In order to permit the Commission to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, upon demand, promptly make available to the Commission maps and other documentation showing exactly where within the City the Grantee is currently providing Cable Service. Grantee shall meet with the Commission, not less than once quarterly, to demonstrate Grantee's compliance with the provisions of this section concerning the deployment of Cable Services in the City including, by way of example, the provision of this section in which Grantee commits that a significant portion of its initial investment will be targeted to areas below the median income within the City, and the provisions of this section that prohibit discrimination in the deployment of Cable Services. In order to permit the Commission and the City to monitor and enforce the provisions of this section and other provisions of this Franchise, the Grantee shall, commencing April 15, 2016, and continuing throughout the term of this Franchise, meet quarterly with the Commission and make available to the Commission the following information:

(i) The total number of Living Units throughout the City;

(ii) The geographic area within the City where the Grantee is capable of delivering Cable Service through either a FTTH or FTTN method of service delivery which shall include sufficient detail to allow the City to determine the availability of Cable Services at commercially-zoned parcels;

(iii) The actual number of Qualified Living Units capable of receiving Cable Service from Grantee through FTTH and FTTN; and

(iv) A list of the public buildings and educational institutions capable of receiving Cable Service from the Grantee (see list attached hereto as Exhibit A).

(c) Additional build out based on Market Success. If, at any quarterly meeting, including any quarterly meeting prior to the second anniversary of the Effective Date of this Franchise as referenced in Section 2.6(a) herein, Grantee is actually serving twenty seven and one-half percent (27.5%) of the households capable of receiving Cable Service, then Grantee agrees the minimum build-out commitment shall increase to include all of the households then capable of receiving Cable Service plus an additional fifteen (15%) of the total households in the City, which Grantee agrees to serve within two (2) years from the quarterly meeting; provided, however, the Grantee shall make its best efforts to complete such deployment within a shorter period of time. For example, if, at a quarterly meeting with the Commission, Grantee shows that it is capable of serving sixty percent (60%) of the households in the City with Cable Service and is actually serving thirty percent (30%) of those households with Cable Service, then Grantee will agree to serve an additional fifteen percent (15%) of the total households in the City no later than two (2) years after that quarterly meeting (a total of seventy-five percent (75%) of the total households). This additional build-out based on market success shall continue until every household in the City is served.

(d) Nondiscrimination. Grantee shall provide Cable Service under non-discriminatory rates and reasonable terms and conditions to all Subscribers who reside in Living Units in any location where the Grantee is capable of providing Cable Service. Grantee shall not arbitrarily refuse to provide Cable Services to any Person or in any location where the Grantee is capable of providing Cable Service. Any Qualified Living Unit should also include Commercially-Zoned Parcels. "Commercially-Zoned Parcels" mean any Street address or municipally identified lot or parcel of real estate with a building. Grantee shall not deny Cable Services to any group of Subscribers or potential residential Subscribers based upon the income level of residents of the local area in which such group resides, nor shall Grantee base decisions about construction or maintenance of its Cable System or facilities based upon the income level of residents of the local area in which such group resides. Grantee shall provide such service at non-discriminatory monthly rates for residential Subscribers, consistent with Applicable Law. Grantee shall not discriminate between or among any individuals in the availability of Cable Service based upon income in accordance and consistent with 47 U.S.C. Section 541(a)(3), or based upon race or ethnicity.

(e) Standard Installation. Grantee shall provide Cable Services at its standard installation within seven (7) days of a request by any Person in a Qualified Living Unit. A request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee or receipt by Grantee of a verified verbal or written request.

(f) Multiple Dwelling Units. The Grantee shall offer the individual units of a multiple dwelling unit all Cable Services offered to other Dwelling Units in the City. Grantee shall, upon request, individually wire units upon request of the property owner or renter who has been given written authorization by the owner. Such offering is conditioned upon the Grantee having legal access to said unit and any payment (for Grantee's reasonable costs of internal wiring) as applicable. The City acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a multiple dwelling unit.

2.7 Periodic Public Review of Franchise. Within sixty (60) Days of the third anniversary of the Effective Date of this Franchise or third annual anniversary of any extension of the Franchise term, the City may conduct a public review of the Franchise. The purpose of any such review shall be to ensure, with the benefit of full opportunity for public comment, that the Grantee continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance with the requirements of this Franchise, local regulatory environment, community needs and interests, and other such factors. Both the City and Grantee agree to make a full and good faith effort to participate in the review. So long as Grantee receives reasonable notice, Grantee shall participate in the review process and shall fully cooperate. The review shall not operate to modify or change any provision of this Franchise without mutual written consent in accordance with Section 17.6 of this Franchise.

2.8 Transfer of Ownership.

(a) No sale, transfer, assignment or “fundamental corporate change”, as defined in Minn. Stat. § 238.083, of this Franchise shall take place until the parties to the sale, transfer, or fundamental corporate change files a written request with City for its approval, provided, however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure an indebtedness.

(b) City shall have thirty (30) Days from the time of the request to reply in writing and indicate approval of the request or its determination that a public hearing is necessary due to potential adverse affect on Grantee’s Subscribers resulting from the sale or transfer. Such approval or determination shall be expressed in writing within thirty (30) Days of receipt of said request, or the request shall be deemed approved as a matter of law.

(c) If a public hearing is deemed necessary pursuant to (b) above, such hearing shall be commenced within thirty (30) Days of such determination and notice of any such hearing shall be given in accordance with local law or fourteen (14) Days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.

(d) Within thirty (30) Days after the closing of the public hearing, City shall approve or deny in writing the sale or transfer request. City shall set forth in writing with particularity its reason(s) for denying approval. City shall not unreasonably withhold its approval.

(e) The parties to the sale or transfer of the Franchise only, without the inclusion of the System in which substantial construction has commenced, shall establish that the sale or transfer of only the Franchise will be in the public interest.

(f) Any sale or transfer of stock in Grantee so as to create a new controlling interest in the System shall be subject to the requirements of this Section 2.8. The term “controlling interest” as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

(g) In no event shall a transfer or assignment of ownership or control be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

(h) In the event of any proposed sale or assignment pursuant to paragraph (a) of this section, City shall have the right of first refusal of any bona fide offer to purchase only the Cable System. Bona fide offer, as used in this section, means an offer received by the Grantee which it intends to accept subject to City’s rights under this section. This written offer must be conveyed to City along with the Grantee’s written acceptance of the

offer contingent upon the rights of City provided for in this section. City shall be deemed to have waived its rights under this paragraph (h) in the following circumstances:

- (i) If it does not indicate to Grantee in writing, within thirty (30) Days of notice of a proposed sale or assignment, its intention to exercise its right of purchase; or

- (ii) It approves the assignment or sale of the Franchise as provided within this section

- (i) A transfer of the Franchise shall not include a transfer of ownership or other interest in Grantee to the parent of Grantee or to another Affiliate of Grantee; transfer of an interest in the Franchise or the rights held by Grantee under the Franchise to the parent of Grantee or to another Affiliate of Grantee; any action which is the result of a merger of the parent of Grantee; or any action which is the result of a merger of another Affiliate of Grantee. Nothing in this Section 2.8 (i) shall be read to serve as a waiver of Grantee's obligation to obtain the City's advance written consent to any proposed transfer that constitutes a change in the "controlling interest" of the Grantee as set forth in 2.8 (f) herein and Minn. Stat. Section 238.083.

2.9 Expiration. Upon expiration of the Franchise, the City shall have the right at its own election and subject to Grantee's rights under Section 626 of the Cable Act to:

- (a) extend the Franchise, though nothing in this provision shall be construed to require such extension;

- (b) renew the Franchise, in accordance with Applicable Laws;

- (c) invite additional franchise applications or proposals;

- (d) terminate the Franchise subject to any rights Grantee has under Section 626 of the Cable Act; or

- (e) take such other action as the City deems appropriate.

2.10 Right to Require Removal of Property. At the expiration of the term for which the Franchise is granted provided no renewal is granted, or upon its forfeiture or revocation as provided for herein, the City shall have the right to require Grantee to remove at Grantee's own expense all or any part of the Cable System, used exclusively to provide Cable Service, from all Streets and public ways within the Franchise Area within a reasonable time. If Grantee fails to do so, the City may perform the work and collect the cost thereof from Grantee.

2.11 Continuity of Service Mandatory. It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Grantee are honored. In the event that Grantee elects to overbuild, rebuild, modify, or sell the system, or the City revokes or fails to renew the Franchise, Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service, regardless of the circumstances, during the

lifetime of the Franchise. In the event of expiration, purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, sale, lease, or other transfer to any other Person, including any other grantee of a cable communications franchise, the current Grantee shall cooperate fully to operate the system in accordance with the terms and conditions of this Franchise for a temporary period sufficient in length to maintain continuity of service to all Subscribers.

SECTION 3 OPERATION IN STREETS AND RIGHTS-OF-WAY

3.1 Use of Streets.

(a) Grantee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the City. Without limiting the foregoing and subject to Section 2.1(b) herein, Grantee expressly agrees that it will construct, operate and maintain its Cable System in compliance with, and subject to, the requirements of the City Code, including by way of example and not limitation, those requirements governing the placement of Grantee's Cable System; and with other applicable City Codes, and will obtain and maintain all permits and bonds required by the City Code in addition to those required in this Franchise.

(b) All wires, conduits, cable and other property and facilities of Grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon, or other use of, the Streets of City. Grantee shall keep and maintain all of its property in good condition, order and repair so that the same shall not menace or endanger the life or property of any Person. Grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the City.

(c) All wires, conduits, cables and other property and facilities of Grantee, shall be constructed and installed in an orderly and workmanlike manner. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

3.2 Construction or Alteration. Subject to Section 2.1(b) herein, Grantee shall in all cases comply with the City Code, City resolutions and City regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain the Cable System. Grantee shall, upon request, provide information to the City regarding its progress in completing or altering the Cable System.

3.3 Non-Interference. Grantee shall exert its best efforts to construct and maintain a Cable System so as not to interfere with other use of Streets. Grantee shall, where possible in the

case of above ground lines, make use of existing poles and other facilities available to Grantee. When residents receiving underground service or who will be receiving underground service will be affected by proposed construction or alteration, Grantee shall provide such notice as set forth in the permit or in City Code of the same to such affected residents.

3.4 Consistency with Designated Use. Notwithstanding the above grant to use Streets, no Street shall be used by Grantee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Street was created or dedicated, or presently used under Applicable Laws.

3.5 Undergrounding. Grantee shall place underground all of its transmission lines which are located or are to be located above or within the Streets of the City in the following cases:

- (a) all other existing utilities are required to be placed underground by statute, resolution, policy or other Applicable Law;
- (b) Grantee is unable to get pole clearance;
- (c) underground easements are obtained from developers of new residential areas; or
- (d) utilities are overhead but residents prefer underground (service provided at cost).

If an ordinance is passed which involves placing underground certain utilities including Grantee's cable plant which is then located overhead, Grantee shall participate in such underground project and shall remove poles, cables and overhead wires if requested to do so and place facilities underground. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

Grantee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except for Drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

3.6 Maintenance and Restoration.

- (a) Restoration. In case of disturbance of any Street, public way, paved area or public improvement by Grantee, Grantee shall, at its own cost and expense and in accordance with the requirements of Applicable Law, restore such Street, public way,

paved area or public improvement to substantially the same condition as existed before the work involving such disturbance took place. All restoration occurring in private easements or on other private property shall be performed in accordance with the City Code. Grantee shall perform all restoration work within a reasonable time and with due regard to seasonal working conditions. If Grantee fails, neglects or refuses to make restorations as required under this section, then the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee causes any damage to private property in the process of restoring facilities, Grantee shall repair such damage.

(b) Maintenance. Grantee shall maintain all above ground improvements that it places on City right-of-way pursuant to the City Code and any permit issued by the City. In order to avoid interference with the City's ability to maintain the right-of-way, Grantee shall provide such clearance as is required by the City Code and any permit issued by the City. If Grantee fails to comply with this provision and by its failure property is damaged, Grantee shall be responsible for all damages caused thereby.

(c) Disputes. In any dispute over the adequacy of restoration or maintenance relative to this section, final determination shall be the prerogative of the City, Department of Public Works and consistent with the City Code and any permit issued by the City.

3.7 Work on Private Property. Grantee, with the consent of property owners, shall have the authority, pursuant to the City Code, to trim trees upon and overhanging Streets, alleys, sidewalks, and public ways so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the reasonable expense of Grantee.

3.8 Relocation.

(a) City Property. If, during the term of the Franchise, the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any Street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding structure, structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, for any public purpose, Grantee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed. Nothing herein shall mandate that City provide reimbursement to Grantee for the costs of such relocation and removal. However, if the City makes available funds for the cost of placing facilities underground, nothing herein shall preclude the Grantee from participating in such funding to the extent consistent with the City Code or Applicable Laws.

(b) Utilities and Other Franchisees. If, during the term of the Franchise, another entity which holds a franchise or any utility requests Grantee to remove or

relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or their more efficient use, or to "make ready" the requesting party's facilities for use by others, or because Grantee is using a facility which the requesting party has a right or duty to remove, Grantee shall do so. The companies involved may decide among themselves who is to bear the cost of removal or relocation, pursuant to City Code, and provided that the City shall not be liable for such costs.

(c) Notice to Remove or Relocate. Any Person requesting Grantee to remove or relocate its facilities shall give Grantee no less than forty-five (45) Days' advance written notice to Grantee advising Grantee of the date or dates removal or relocation is to be undertaken; provided, that no advance written notice shall be required in emergencies or in cases where public health and safety or property is endangered.

(d) Failure by Grantee to Remove or Relocate. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Grantee. If Grantee fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Grantee would have been liable for the cost of performing such work, the cost thereof to the party performing the work or having the work performed shall be paid by Grantee.

(e) Procedure for Removal of Cable. Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the Streets along the extension of cable to be removed, except as hereinafter provided. Grantee may remove any underground cable from the Streets which has been installed in such a manner that it can be removed without trenching or other opening of the Streets along the extension of cable to be removed. Subject to Applicable Law, Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the Streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the Streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

(f) Movement of Buildings. Grantee shall, upon request by any Person holding a building moving permit, franchise or other approval issued by the City, temporarily remove, raise or lower its wire to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the Person requesting same, and Grantee shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than fifteen (15) Days' notice to the cable company to arrange for such temporary wire changes.

SECTION 4 REMOVAL OR ABANDONMENT OF SYSTEM

4.1 Removal of Cable System. In the event that: (1) the use of the Cable System is discontinued for any reason for a continuous period of twelve (12) months; or (2) the Cable System has been installed in a Street without complying with the requirements of this Franchise, Grantee, at its expense shall, at the demand of the City remove promptly from the Streets all of the Cable System, used only to provide Cable Service, other than any which the City may permit to be abandoned in place. In the event of any such removal Grantee shall promptly restore to a condition as nearly as possible to its prior condition the Street or other public places in the City from which the System has been removed.

4.2 Abandonment of Cable System. In the event of Grantee's abandonment of the Cable System, used only to provide Cable Service, City shall have the right to require Grantee to conform to the state right-of-way rules, Minn. Rules, Chapter 7819. The Cable System to be abandoned in place shall be abandoned in the manner prescribed by the City. Grantee may not abandon any portion of the System without having first given three (3) months written notice to the City. Grantee may not abandon any portion of the System without compensating the City for damages resulting from the abandonment.

4.3 Removal after Abandonment or Termination. If Grantee has failed to commence removal of System, used only to provide Cable Service, or such part thereof as was designated by City, within thirty (30) days after written notice of City's demand for removal consistent with Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given, City shall have the right to apply funds secured by the letter of credit and performance bond toward removal and/or declare all right, title, and interest to the Cable System to be in City with all rights of ownership including, but not limited to, the right to operate the Cable System or transfer the Cable System to another for operation by it.

4.4 City Options for Failure to Remove Cable System. If Grantee has failed to complete such removal within the time given after written notice of the City's demand for removal is given, the City shall have the right to exercise one of the following options:

(a) Declare all right, title and interest to the System, used only to provide Cable Service, to be in the City or its designee with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it; or

(b) Declare the System abandoned and cause the System, if used only to provide Cable Service, or such part thereof as the City shall designate, to be removed at no cost to the City. The cost of said removal shall be recoverable from the security fund, indemnity and penalty section provided for in this Franchise or from Grantee directly.

(c) Upon termination of service to any Subscriber, Grantee shall promptly remove all its facilities and equipment from within the dwelling of a Subscriber who owns such dwelling upon his or her written request, except as provided by Applicable

Law. Such Subscribers shall be responsible for any costs incurred by Grantee in removing the facilities and equipment.

4.5 System Construction and Equipment Standards. The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform, when applicable, with the National Electrical Safety Code, the National Electrical Code and the FCC's Rules and Regulations.

4.6 System Maps and Layout. To the extent not otherwise provided for in Section 2.6(b), Grantee, or an affiliate, shall maintain complete and accurate records, maps and diagrams of the location of all its facilities used to provide Cable Services and the Cable System maintained by QC in the Streets and make them available to the City upon request.

SECTION 5 SYSTEM DESIGN AND CAPACITY

5.1 Availability of Signals and Equipment.

(a) The Cable System shall have a bandwidth capable of providing the equivalent of a typical 750 MHz Cable System. Recognizing that the City has limited authority under federal law to designate the technical method by which Grantee provides Cable Service, as of the Effective Date of this Franchise, Grantee provides its Cable Service utilizing two (2) different methods. First, using a PON platform, the Grantee provides Cable Service to some Qualified Living Units by connecting fiber directly to the household ("FTTP"). Second, the Grantee provides Cable Service to some Qualified Living Units by deploying fiber further into the neighborhoods and using the existing copper infrastructure to increase broadband speeds ("FTTN"). Generally speaking, when Grantee deploys FTTN, households located within four thousand (4,000) cable feet of a remote terminal shall receive broadband speeds capable of providing Cable Service. In both the FTTP and FTTN footprint, a household receiving a minimum of 25 Mbps downstream will generally be capable of receiving Cable Service after Grantee performs certain network grooming and conditioning.

(b) The Grantee shall comply with all FCC regulations regarding carriage of digital and HDTV transmissions.

(c) Grantee agrees to maintain the Cable System in a manner consistent with, or in excess of the specifications in Section 5.1 (a) and (b) throughout the term of the Franchise with sufficient capability and technical quality to enable the implementation and performance of all the requirements of this Franchise, including the exhibits hereto, and in a manner which meets or exceeds FCC technical quality standards at 47 C.F.R. § 76 Subpart K, regardless of the particular format in which a signal is transmitted.

5.2 Free Cable Service to Public Buildings.

(a) As part of its support for PEG use of the System, the Grantee shall provide a free drop to the Subscriber network and free Basic Cable Service and Expanded Basic

Cable Service to all of the sites listed on Exhibit A attached hereto, and to such other public institutions as the City may reasonably request from time to time provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City's sole discretion.

(b) The Grantee is only required to provide a single free drop to the Subscriber network, to a single outlet at a point within the location selected by that location. However, the location may extend the drop to multiple outlets and receive free Basic and Expanded Basic Cable Service at each outlet so long as such extension does not result in any violations of applicable leakage standards which the Grantee is obligated to meet. A location that wishes to install multiple outlets may do so itself, or may contract with the Grantee to do so. Grantee shall provide up to three (3) additional Set Top Boxes to each new location free of charge so that the services can be received and individually tuned by each receiver connected to the drop at a location. If an institution physically moves locations, such institution may move existing Set Top Boxes to the new locations with a free drop, and the moved Set Top Box will not count against the three (3) additional Set Top Boxes. Grantee will replace and maintain Set Top Boxes it provides or that it had provided as necessary so that locations may continue to view the free services Grantee is required to provide. Provided such location is a Qualified Living Unit and not currently receiving service from another provider. However, City may determine to disconnect the other cable provider and require Grantee to meet the free service obligation, as determined in City's sole discretion.

(c) Outlets of Basic and Expanded Basic Cable Service provided in accordance with this section may be used to distribute Cable Services throughout such buildings; provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. Grantee agrees that if any broadband service is required in order to receive the free service obligation set forth in this section, Grantee will provide such broadband service free of charge for the sole purpose of facilitating the provision of free Cable Service required by this section. Grantee agrees that it will not offset, deduct or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to connections or services to public facilities.

5.3 System Specifications.

(a) System Maintenance. In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise.

(b) Emergency Alert Capability. At all times during the term of this Franchise, Grantee shall provide and maintain an Emergency Alert System (EAS) consistent with applicable federal law and regulations including 47 C.F.R., Part 11, and any Minnesota State Emergency Alert System requirements. The City may identify

authorized emergency officials for activating the EAS consistent with the Minnesota State Emergency Statewide Plan (“EAS Plan”). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Laws and the EAS Plan. Nothing in this section is intended to expand Grantee’s obligations beyond that which is required by the EAS Plan and Applicable Law.

(c) **Standby Power.** Grantee shall provide standby power generating capacity at the Cable System control center. Grantee shall maintain standby power system supplies, rated at least at two (2) hours’ duration, throughout the trunk and distribution networks. In addition, Grantee shall have in place throughout the Franchise term a plan, and all resources necessary for implementation of the plan, for dealing with outages of more than two (2) hours.

(d) **Technical Standards.** The technical standards used in the operation of the Cable System shall comply, at minimum, with the applicable technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76, Subpart K of the Code of Federal Regulations, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference. The Cable System shall be installed and maintained in accordance with standard good engineering practices and shall conform with the National Electrical Safety Code and all other Applicable Laws governing the construction of the Cable System.

5.4 Performance Testing. Grantee shall perform all applicable system tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Franchise. These tests shall include, at a minimum:

- (a) Initial proof of performance for any construction;
- (b) Semi-annual compliance tests;
- (c) Tests in response to Subscriber complaints;
- (d) Tests requested by the City to demonstrate franchise compliance; and
- (e) Written records of all system test results performed by or for Grantee shall be maintained, and shall be available for City inspection upon request.

5.5 Special Testing.

(a) Throughout the term of this Franchise, City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise. In addition, City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints regarding such construction or installation work or pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. City shall

endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing.

(b) Before ordering such tests, Grantee shall be afforded thirty (30) Days following receipt of written notice to investigate and, if necessary, correct problems or complaints upon which tests were ordered. City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) Days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted at Grantee's expense by Grantee's qualified engineer. The City shall have a right to participate in such testing by having an engineer of City's choosing, and at City's expense, observe and monitor said testing.

SECTION 6 PROGRAMMING AND SERVICES

6.1 Categories of Programming Service. Grantee shall provide video programming services in at least the following broad categories:

- Local Broadcast (subject to federal carriage requirements)
- Public Broadcast
- News and Information
- Sports
- General Entertainment
- Arts/Performance/Humanities
- Science/Technology
- Children/Family/Seniors
- Foreign Language/Ethnic Programming
- Public, Educational and Governmental Access Programming (to the extent required by the Franchise)
- Movies
- Leased Access

6.2 Changes in Programming Services. Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the City's consent. Further, Grantee shall provide at least thirty (30) Days' prior written notice to Subscribers and to the City of Grantee's request to effectively delete any broad category of programming or any Channel within its control, including all proposed changes in bandwidth or Channel allocation and any assignments including any new equipment requirements that may occur as a result of these changes.

6.3 Parental Control Device. Upon request by any Subscriber, Grantee shall make available for sale or lease a parental control or lockout device that will enable the Subscriber to block all access to any and all Channels without affecting those not blocked. Grantee shall

inform Subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

6.4 FCC Reports. The results of any tests required to be filed by Grantee with the FCC shall also be copied to City within ten (10) Days of the conduct of the date of the tests.

6.5 Annexation. Unless otherwise provided by Applicable Law, including the City Code, upon the annexation of any additional land area by City, the annexed area shall thereafter be subject to all the terms of this Franchise upon sixty (60) Days written notification to Grantee of the annexation by City. Unless otherwise required by Applicable Laws, nothing herein shall require the Grantee to expand its Cable System to serve, or to offer Cable Service to any area annexed by the City if such area is then served by another Wireline MVPD franchised to provide multichannel video programming.

6.6 Line Extension. Grantee shall not have a line extension obligation until the first date by which Grantee is providing Cable Service to more than fifty percent (50%) of all Subscribers receiving facilities based Cable Service from both the Grantee and any other provider(s) of Cable Service within the City. At that time, the City, in its reasonable discretion and after meeting with Grantee, shall determine the timeframe to complete deployment to the remaining households in the City, including a density requirement that is the same or similar to the requirement of the incumbent franchised cable operator.

6.7 Nonvoice Return Capability. Grantee is required to use cable and associated electronics having the technical capacity for nonvoice return communications.

SECTION 7 PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

7.1 Number of PEG Access Channels. Within one hundred eighty (180) days of the Effective Date, Grantee will make available three (3) PEG Access Channels.

7.2 Digital and High Definition PEG Carriage Requirements. While the parties recognize that while the primary signals of local broadcast stations are simulcast in standard definition (“SD”) and high definition (“HD”) formats, the Grantee’s obligation with respect to carriage of PEG in HD and SD formats shall be as follows:

(a) Grantee agrees to carry all PEG Access Channels in HD provided the entity originating the signal provides the Grantee an HD signal. Further, Grantee will downconvert any such signal to an SD format so that Subscribers who choose not to subscribe to an HD package may receive said signal in an SD format.

(b) Grantee is not required to convert a signal delivered in a lower quality format to a higher quality format. The City shall have no obligation to provide a signal to the Grantee in a HD format.

(c) All PEG Access Channels must be receivable by Subscribers without special expense in addition to the expense paid to receive commercial services the

Subscriber receives. City acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any Subscriber who can view an HD signal delivered via the Cable System at a receiver shall also be able to view the HD Access Channels at that receiver, without additional charges or equipment. By agreeing to make PEG available in HD format, Grantee is not agreeing to provide free HD equipment to Subscribers including complimentary municipal and educational accounts, or to modify its equipment or pricing policies in any manner. City acknowledges that not every Subscriber may be able to view HD PEG programming (for example, because they do not have an HDTV in their home or have chosen not to take an HD-capable receiving device from Grantee or other equipment provider) or on every television in the home.

(d) The Grantee, upon request of the City, will provide technical assistance or diagnostic services to determine whether or not the problem with the PEG signals is the result of matters for which the Grantee is responsible, and if so the Grantee will take prompt corrective actions.

(e) The Grantee will provide any PEG Access Channels on the Basic Cable Service tier throughout the life of the Franchise, or if there is no Basic Cable Service tier, shall provide the PEG Access Channels to any Person who subscribes to any level of cable video programming service, and otherwise in accordance with Applicable Laws. To the extent technically feasible, Grantee shall, upon request from the City, provide City with quarterly viewership numbers for each of the PEG Access Channels carried on Grantee's Cable System.

(f) Grantee shall facilitate carriage of PEG Access Channel program listings on its interactive programming guide, at no cost to the City provided that the City shall hold Grantee harmless should the City or PEG providers fail to provide correct or timely information to the interactive guide programmers.

(g) If Channels are selected through menu systems, the PEG Access Channels shall be displayed in the same manner as other Channels, and with equivalent information regarding the programming on the Channel. To the extent that any menu system is controlled by a third party, Grantee shall ensure that the Grantee will provide PEG listings on that menu system, if it is provided with the programming information by the City.

7.3 Control of PEG Channels. The control and administration of the Access Channels shall rest with the City and the City may delegate, from time to time over the term of this Franchise, such control and administration to various entities as determined in City's sole discretion.

7.4 Transmission of Access Channels. Access Channels may be used for transmission of non-video signals in compliance with Applicable Laws. This may include downstream transmission of data using a protocol such as TCP/IP or current industry standards. Should Grantee develop the capability to provide bi-directional data transmission, spectrum capacity shall be sufficient to allow Subscribers to transmit data to PEG facilities.

7.5 Access Channel Locations.

(a) Grantee shall provide the City's government access channel in both HD and SD. The government access channel will be located on Channel 239 and shall at all times be located in the Channel neighborhood offering news/public affairs programming on Grantee's Cable System channel lineup. The government access channel shall have video and audio signal strength, signal quality, and functionality equivalent to the highest quality broadcast and commercial cable/satellite Channels carried by the Grantee on its Cable System.

(i) Grantee shall carry the remaining public and educational Channels (PE Channels) on Channel 26 in its Channel lineup as a means to provide ease of access by Subscribers to the group of PE Channels placed consecutively on Channel numbers significantly higher in the Channel lineup. This use of one (1) Channel to access the group of PE Channels required under this Franchise shall be referred to as a "Mosaic Channel." The Mosaic Channel shall display the group of PE Channels on a single Channel screen and serve as a navigation tool for Subscribers. The Mosaic Channel shall allow Subscribers to navigate directly from Channel 26 to any of the PE Channels requested in a single operation without any intermediate steps to a chosen PE Channel in the group.

(ii) Grantee shall use Channel 26 as a Mosaic Channel to access the PE Channels required under this Franchise. The group of consecutive PE channels residing at higher Channel numbers will retain Channel names and identity for marketing purposes, unless approved by the City. Grantee shall not include any other programming or Channels on the Commission's PE Mosaic Channel unless the City provides advance written consent.

(iii) When using the Mosaic Channel, Subscribers shall be directed to the requested PE Channel in an HD format if appropriate to the Subscriber's level of service; otherwise, the Subscriber shall be directed to the SD PE Channel. The Mosaic Channel mechanism shall allow Subscribers to navigate directly from Channel 26 to the requested Commission Access Channels which shall be located on Channel numbers 8110 (educational access) and 8111 (public access).

(iv) Grantee shall consult with the City (or City's designee) to determine the PE Channel information displayed on the Mosaic Channel. However, the information shall have video and audio signal strength, signal quality, and functionality equivalent to the highest quality broadcast and commercial cable/satellite channels carried by the Grantee on its Cable System in a Mosaic format.

(v) The Mosaic Channel assigned for use by the City shall be used to navigate to the group of City PE Channels and will be placed near other PEG Mosaic Channels

(vi) If through technology changes or innovation in the future, the Grantee discontinues the use of Mosaic presentations, then Grantee shall provide the PE Channels to Subscribers at equivalent visual and audio quality and equivalent functionality as Grantee delivers the highest quality broadcast stations and highest quality commercial cable/satellite channels on its Cable System with no degradation.

(b) The Grantee shall not charge for use of the PEG Access Channels, equipment, facilities or services.

(c) In no event shall any Access Channel reallocations be made prior to ninety (90) Days written notice to the City by Grantee, except for circumstances beyond Grantee's reasonable control. The Access Channels will be located within reasonable proximity to other commercial video or broadcast Channels, excluding pay-per-view programming offered by Grantee in the City.

(d) Grantee agrees not to encrypt the Access Channels differently than other commercial Channels available on the Cable System.

(e) In conjunction with any occurrence of any Access Channel(s) relocation, as may be permitted by this Franchise, Grantee shall provide a minimum of Nine Thousand Dollars (\$9,000) of in-kind air time per event on advertiser supported Channels (e.g. USA, TNT, TBS, Discovery Channel, or other comparable Channels) for the purpose of airing City's, or its designees', pre-produced thirty (30) second announcement explaining the change in location, or if Grantee does not have air time capabilities a mutually agreed equivalent shall be provided.

7.6 Navigation to Access Channels. Grantee agrees that if it utilizes a visual interface under its control on its Cable System for all Channels, the Access Channels shall be treated in a non-discriminatory fashion consistent with Applicable Laws so that Subscribers will have ready access to Access Channels. This shall not be construed to require Grantee to pay any third party fees that may result from this obligation.

7.7 Ownership of Access Channels. Grantee does not relinquish its ownership of or ultimate right of control over a Channel by designating it for PEG use. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a Channel position so designated. Grantee shall not exercise editorial control over any public, educational, or governmental use of a Channel position, except Grantee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity in violation of Applicable Law.

7.8 Noncommercial Use of PEG. Permitted noncommercial uses of the Access Channels shall include by way of example and not limitation: (1) the identification of financial supporters similar to what is provided on public broadcasting stations; or (2) the solicitation of financial support for the provision of PEG programming by the City or third party users for charitable, educational or governmental purposes; or (3) programming offered by accredited,

non-profit, educational institutions which may, for example, offer telecourses over a Access Channel.

7.9 Dedicated Fiber Return Lines.

(a) Grantee shall provide and maintain, free of charge with no transport costs or other fees or costs imposed, a direct fiber connection and necessary equipment to transmit PEG programming from the City Hall control room racks to the Grantee headend ("PEG Origination Connection").

(b) In addition to the PEG Origination Connection, the Grantee shall, free of charge, construct a direct connection and necessary equipment to the programming origination site located at Edina City Hall where PEG programming is originated by the Commission.

(c) Grantee shall at all times provide and maintain, free of charge, a drop to the Cable System, required Set-Top Box and free Basic Cable Service and Expanded Basic Service to the City Hall and the location from which PEG programming is originated (currently the playback facility at the Edina City Hall), to allow these facilities to view (live) the downstream PEG programming Channels on Grantee's Cable System so they can monitor the PEG signals and make certain that PEG programming is being properly received (picture and sound) by Subscribers.

7.10 Interconnection. To the extent technically feasible and permitted under Applicable Laws, Grantee will allow necessary interconnection with any newly constructed City and school fiber for noncommercial programming to be promoted and administered by the City as allowed under Applicable Laws and at no additional cost to the City or schools. This may be accomplished through a patch panel or other similar facility and each party will be responsible for the fiber on their respective sides of the demarcation point. Grantee reserves its right to review on a case-by-case basis the technical feasibility of the proposed interconnection. Based on this review Grantee may condition the interconnection on the reasonable reimbursement of Grantee's incremental costs, with no markup for profit, to recoup Grantee's construction costs only. In no event will Grantee impose any type of recurring fee for said interconnection.

7.11 Ancillary Equipment. Any ancillary equipment operated by Grantee for the benefit of PEG Access Channels on Grantee's fiber paths or Cable System, whether referred to switchers, routers or other equipment, will be maintained by Grantee, at no cost to the City or schools for the life of the Franchise. Grantee is responsible for any ancillary equipment on its side of the demarcation point and the City or school is responsible for all other production/playback equipment.

7.12 Future Fiber Return Lines for PEG. At such time that the City determines:

(a) that the City desires the capacity to allow Subscribers in the City to receive PEG programming (video or character generated) which may originate from schools, City facilities, other government facilities or other designated facilities (other than those indicated in paragraph 10); or

(b) that the City desires to establish or change a location from which PEG programming is originated; or

(c) that the City desires to upgrade the Connection to Grantee from an existing signal point of origination,

the City will give Grantee written notice detailing the point of origination and the capability sought by the City. Grantee agrees to submit a cost estimate to implement the City's plan within a reasonable period of time but not later than September 1st in the year preceding the request for any costs exceeding Twenty-five Thousand and No/100 Dollars (\$25,000). The cost estimate will be on a time and materials basis with no additional markup. After an agreement to reimburse Grantee for Grantee's out of pocket time and material costs, Grantee will implement any necessary Cable System changes within a reasonable period of time. Nothing herein prevents the City, or a private contractor retained by the City, from constructing said return fiber.

7.13 Access Channel Carriage.

(a) Any and all costs associated with any modification of the Access Channels or signals after the Access Channels/signals leave the City's designated playback facilities, or any designated playback center authorized by the City shall be borne entirely by Grantee. Grantee shall not cause any programming to override PEG programming on any Access Channel, except by oral or written permission from the City, with the exception of emergency alert signals.

(b) The City may request and Grantee shall provide an additional Access Channel when the cumulative time on all the existing Access Channels combined meets the following standard: whenever one of the Access Channels in use during eighty percent (80%) of the weekdays, Monday through Friday, for eighty percent (80%) of the time during a consecutive three (3) hour period for six (6) weeks running, and there is a demand for use of an additional Channel for the same purpose, the Grantee has six (6) months in which to provide a new, Access Channel for the same purpose; provided that, the provision of the additional Channel or Channels does not require the Cable System to install Converters.

(c) The VHF spectrum shall be used for one (1) of the public, educational, or governmental specially designated Access Channels.

(d) Subject to the terms of this Franchise, the City or its designee shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use.

(e) The Grantee shall monitor the Access Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of Access Channels, provided however, that the Grantee is not responsible for the production quality of PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG access programming. Grantee shall carry all components of the standard definition of Access Channel including, but not

limited to, closed captioning, stereo audio and other elements associated with the programming.

7.14 Access Channel Support.

(a) Upon the Effective Date of this Franchise, Grantee shall collect and remit to the City Sixty cents (60¢) per Subscriber per month in support of PEG capital ("PEG Fee").

(b) On August 1, 2017, the City, at its discretion, and upon ninety (90) Days advance written notice to Grantee, may require Grantee to increase the PEG Fee to Sixty-five cents (65¢) per Subscriber per month for the remaining term of the Franchise. The PEG Fee shall be used by City in its sole discretion to fund PEG access capital expenditures. In no event shall the PEG Fee be assessed in an amount different from that imposed upon the incumbent cable provider. In the event the incumbent cable provider agrees to a higher or lower PEG Fee, Grantee will increase or decrease its PEG Fee upon ninety (90) Days written notice from the City.

(c) The PEG Fee is not intended to represent part of the Franchise Fee and is intended to fall within one (1) or more of the exceptions in 47 U.S.C. § 542. The PEG Fee may be categorized, itemized, and passed through to Subscribers as permissible, in accordance with 47 U.S.C. §542 or other Applicable Laws. Grantee shall pay the PEG Fee to the City quarterly at the same time as the payment of Franchise Fees under Section 16.1 of the Franchise. Grantee agrees that it will not offset or reduce its payment of past, present or future Franchise Fees required as a result of its obligation to remit the PEG Fee.

(d) Any PEG Fee amounts owing pursuant to this Franchise which remain unpaid more than twenty-five (25) Days after the date the payment is due shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or the prime lending rate published by the Wall Street Journal on the Day the payment was due plus two percent (2%), whichever is greater.

7.15 PEG Technical Quality.

(a) Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel Signal delivered to Grantee, but Grantee shall not implement a change in the method of delivery of Access Channels that results in a material degradation of signal quality or impairment of viewer reception of Access Channels, provided that this requirement shall not prohibit Grantee from implementing new technologies also utilized for commercial Channels carried on its Cable System. Grantee shall meet FCC signal quality standards when offering Access Channels on its Cable System and shall continue to comply with closed captioning pass-through requirements. There shall be no significant deterioration in an Access Channels signal from the point of origination upstream to the point of reception downstream on the Cable System.

(b) Within twenty-four (24) hours of a written request from City to the Grantee identifying a technical problem with a Access Channel and requesting assistance, Grantee will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Grantee is responsible and if so, Grantee will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Grantee and the City in order to determine the course of action to remedy the problem.

7.16 Access Channel Promotion. Grantee shall allow the City to print and mail a post card for promoting a designated entity's service or generally promoting community programming to households in the City subscribing to Grantee's Cable Service at a cost to the City not to exceed Grantee's out of pocket cost, no less frequently than twice per year, or at such time as a Access Channel is moved or relocated, upon the written request of the City. The post card shall be designed by the City and shall conform to the Grantee's standards and policies for size and weight. Any post card denigrating the Grantee, its service or its programming is not permitted. The City agrees to pay Grantee in advance for the actual cost of such post card.

7.17 Change in Technology. In the event Grantee makes any change in the Cable System and related equipment and facilities or in its signal delivery technology, which requires the City to obtain new equipment in order to be compatible with such change for purposes of transport and delivery of the Access Channels, Grantee shall, at its own expense and free of charge to City or its designated entities, purchase such equipment as may be necessary to facilitate the cablecasting of the Access Channels in accordance with the requirements of the Franchise.

7.18 Relocation of Grantee's Headend. In the event Grantee relocates its headend, Grantee will be responsible for replacing or restoring the existing dedicated fiber connections at Grantee's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards and related obligations of the Franchise free of charge to the City or its designated entities.

7.19 Regional Channel Six. Grantee shall make available Regional Channel Six as long as it is required to do so by the State of Minnesota.

7.20 Government Access Channel Functionality. Grantee agrees to provide the capability such that the City, from its City Hall, can switch its government Access Channel in the following ways:

- (a) Insert live Council meetings from City Hall;
- (b) Replay government access programming from City Hall; and
- (c) Transmit character generated programming.
- (d) Schedule for Grantee to replay City-provided tapes in pre-arranged time slot on the government Access Channel; and

- (e) Switch to other available programming where the City has legal authority.

7.21 **Compliance with Minnesota Statutes Chapter 238.** In addition to the requirements contained in this Section 7 of this Franchise, Grantee and City shall comply with the PEG requirements mandated by Minn. Stat. 238.084.

SECTION 8 REGULATORY PROVISIONS.

8.1 **Intent.** The City shall have the right to administer and regulate activities under the Franchise up to the full extent permitted by Applicable Law.

8.2 **Delegation of Authority to Regulate.** The City reserves the right to delegate its regulatory authority wholly or in part to agents of the City, including, but not limited to, an agency which may be formed to regulate several franchises in the region in a manner consistent with Applicable Laws. This may include but shall not be limited to the Commission or other entity as City may determine in its sole discretion. Any existing delegation in place at the time of the grant of this Franchise shall remain intact unless expressly modified by City.

8.3 **Areas of Administrative Authority.** In addition to any other regulatory authority granted to the City by law or franchise, the City shall have administrative authority in the following areas:

- (a) Administering and enforcing the provisions of this Franchise, including the adoption of administrative rules and regulations to carry out this responsibility.
- (b) Coordinating the operation of Access Channels.
- (c) Formulating and recommending long-range cable communications policy for the Franchise Area.
- (d) Disbursing and utilizing Franchise revenues paid to the City.
- (e) Administering the regulation of rates, to the extent permitted by Applicable Law.
- (f) All other regulatory authority permitted under Applicable Law.

The City or its designee shall have continuing regulatory jurisdiction and supervision over the System and the Grantee's operations under the Franchise to the extent allowed by Applicable Law.

8.4 Regulation of Rates and Charges.

- (a) **Right to Regulate.** The City reserves the right to regulate rates or charges for any Cable Service within the limits of Applicable Law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.

(b) **Notice of Change in Rates and Charges.** Throughout the term of this Franchise, Grantee shall give the City and all Subscribers within the City at least thirty (30) Days' notice of any intended modifications or additions to Subscriber rates or charges. Nothing in this Subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns for the purpose of attracting Subscribers or users.

(c) **Rate Discrimination Prohibited.** Within any category of Subscribers, Grantee shall not discriminate among Subscribers with regard to rates and charges made for any service based on considerations of race, color, creed, sex, marital or economic status, national origin, sexual preference, or (except as allowed by Applicable Law) neighborhood of residence, except as otherwise provided herein; and for purposes of setting rates and charges, no categorization of Subscribers shall be made by Grantee on the basis of those considerations. Nevertheless, Grantee shall be permitted to establish (1) discounted rates and charges for providing Cable Service to low-income, handicapped, or low-income elderly Subscribers, (2) promotional rates, and (3) bulk rate and package discount pricing.

SECTION 9 BOND.

9.1 **Performance Bond.** Upon the Effective Date of this Franchise and at all times thereafter Grantee shall maintain with City a bond in the sum of One Hundred Thousand Dollars (\$100,000.00) in such form and with such sureties as shall be acceptable to City, conditioned upon the faithful performance by Grantee of this Franchise and the acceptance hereof given by City and upon the further condition that in the event Grantee shall fail to comply with any law, ordinance or regulation, there shall be recoverable jointly and severally from the principal and surety of the bond, any damages or losses suffered by City as a result, including the full amount of any compensation, indemnification or cost of removal of any property of Grantee, including a reasonable allowance for attorneys' fees and costs (with interest at two percent (2%) in excess of the then prime rate), up to the full amount of the bond, and which bond shall further guarantee payment by Grantee of all claims and liens against City or any, public property, and taxes due to City, which arise by reason of the construction, operation, maintenance or use of the Cable System. The City shall provide Grantee reasonable advanced notice of not less than ten (10) Days prior to any draw by the City on the performance bond required under this Section 9.

9.2 **Rights.** The rights reserved by City with respect to the bond are in addition to all other rights the City may have under this Franchise or any other law.

9.3 **Reduction of Bond Amount.** City may, in its sole discretion, reduce the amount of the bond.

SECTION 10 SECURITY FUND

10.1 **Security Fund.** If there is an uncured breach by Grantee of a material provision of this Franchise or a pattern of repeated violations of any provision(s) of this Franchise, then

Grantee shall, upon written request, establish and provide to the City, as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the City in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00). In no event shall Grantee fail to post a Twenty Thousand and No/100 Dollar (\$20,000.00) letter of credit within thirty (30) days receipt of a notice of franchise violation pursuant to this Section 10.1. Failure to post said letter of credit shall constitute a separate material violation of this Franchise, unless the breach is cured within such thirty (30) Day period or longer period allowed under the Franchise. The letter of credit shall serve as a common security fund for the faithful performance by Grantee of all the provisions of this Franchise and compliance with all orders, permits and directions of the City and the payment by Grantee of any claim, liens, costs, expenses and taxes due the City which arise by reason of the construction, operation or maintenance of the Cable System. Interest on this deposit shall be paid to Grantee by the bank on an annual basis. The security may be terminated by the Grantee upon the resolution of the alleged noncompliance. The obligation to establish the security fund required by this paragraph is unconditional. The fund must be established in those circumstances where Grantee disputes the allegation that it is not in compliance, and maintained for the duration of the dispute. If Grantee fails to establish the security fund as required, the City may take whatever action is appropriate to require the establishment of that fund and may recover its costs, reasonable attorneys' fees, and an additional penalty of Two Thousand Dollars (\$2,000) in that action.

10.2 Withdrawal of Funds. Provision shall be made to permit the City to withdraw funds from the security fund. Grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose.

10.3 Restoration of Funds. Within ten (10) Days after notice to it that any amount has been withdrawn by the City from the security fund pursuant to 10.4 of this section, Grantee shall deposit a sum of money sufficient to restore such security fund to the required amount.

10.4 Liquidated Damages. In addition to recovery of any monies owed by Grantee to City or damages to City as a result of any acts or omissions by Grantee pursuant to the Franchise, City in its sole discretion may charge to and collect from the security fund the following liquidated damages:

(a) For failure to provide data, documents, reports or information or to cooperate with City during an application process or System review, the liquidated damage shall be One Hundred Dollars (\$100.00) per Day for each Day, or part thereof, such failure occurs or continues.

(b) For failure to comply with any of the provisions of this Franchise for which a penalty is not otherwise specifically provided pursuant to this Paragraph 10.4, the liquidated damage shall be One Hundred Fifty Dollars (\$150.00) per Day for each Day, or part thereof, such failure occurs or continues.

(c) For failure to test, analyze and report on the performance of the System following a request by City, the liquidated damage shall be Two Hundred Fifty Dollars (\$250.00) per Day for each Day, or part thereof, such failure occurs or continues.

(d) Forty-five Days following notice from City of a failure of Grantee to comply with construction, operation or maintenance standards, the liquidated damage shall be Two Hundred Dollars (\$200.00) per Day for each Day, or part thereof, such failure occurs or continues.

(e) For failure to provide the services Grantee has proposed, including but not limited to the implementation and the utilization of the Access Channels the liquidated damage shall be One Hundred Fifty (\$150.00) per Day for each Day, or part thereof, such failure occurs or continues.

10.5 Each Violation a Separate Violation. Each violation of any provision of this Franchise shall be considered a separate violation for which separate liquidated damages can be imposed.

10.6 Maximum 120 Days. Any liquidated damages for any given violation shall be imposed upon Grantee for a maximum of one hundred twenty (120) Days. If after that amount of time Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue all other remedies.

10.7 Withdrawal of Funds to Pay Taxes. If Grantee fails to pay to the City any taxes due and unpaid; or fails to repay to the City, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this Franchise; or fails, after thirty (30) Days notice of such failure by the City to comply with any provision of the Franchise which the City reasonably determines can be remedied by an expenditure of the security, the City may then withdraw such funds from the security fund. Payments are not Franchise Fees as defined in Section 16 of this Franchise.

10.8 Procedure for Draw on Security Fund. Whenever the City finds that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) Days subsequent to receipt of the notice in which to correct the violation before the City may require Grantee to make payment of damages, and further to enforce payment of damages through the security fund. Grantee may, within ten (10) Days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

(a) City shall hear Grantee's dispute at the next regularly scheduled or specially scheduled Council meeting. Grantee shall have the right to speak and introduce evidence. The City shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.

(b) If after hearing the dispute, the claim is upheld by the City, then Grantee shall have thirty (30) Days within which to remedy the violation before the City may require payment of all liquidated damages due it.

10.9 Time for Correction of Violation. The time for Grantee to correct any alleged violation may be extended by the City if the necessary action to collect the alleged violation is of such a nature or character as to require more than thirty (30) Days within which to perform provided Grantee commences corrective action within fifteen (15) Days and thereafter uses reasonable diligence, as determined by the City, to correct the violation.

10.10 Grantee's Right to Pay Prior to Security Fund Draw. Grantee shall have the opportunity to make prompt payment of any assessed liquidated damages and if Grantee fails to promptly remit payment to the City, the City may resort to a draw from the security fund in accordance with the terms of this Section 10 of the Franchise.

10.11 Failure to so Replenish Security Fund. If any security fund is not so replaced, City may draw on said security fund for the whole amount thereof and hold the proceeds, without interest, and use the proceeds to pay costs incurred by City in performing and paying for any or all of the obligations, duties and responsibilities of Grantee under this Franchise that are not performed or paid for by Grantee pursuant hereto, including attorneys' fees incurred by the City in so performing and paying. The failure to so replace any security fund may also, at the option of City, be deemed a default by Grantee under this Franchise. The drawing on the security fund by City, and use of the money so obtained for payment or performance of the obligations, duties and responsibilities of Grantee which are in default, shall not be a waiver or release of such default.

10.12 Collection of Funds Not Exclusive Remedy. The collection by City of any damages or monies from the security fund shall not affect any other right or remedy available to City, nor shall any act, or failure to act, by City pursuant to the security fund, be deemed a waiver of any right of City pursuant to this Franchise or otherwise. Notwithstanding this section, however, should the City elect to impose liquidated damages that remedy shall remain the City's exclusive remedy for the one hundred twenty (120) Day period set forth in Section 10.6.

SECTION 11 DEFAULT

11.1 Basis for Default. City shall give written notice of default to Grantee if City, in its sole discretion, determines that Grantee has:

- (a) Violated any material provision of this Franchise or the acceptance hereto or any rule, order, regulation or determination of the City, state or federal government, not in conflict with this Franchise;
- (b) Attempted to evade any provision of this Franchise or the acceptance hereof;
- (c) Practiced any fraud or deceit upon City or Subscribers; or
- (d) Made a material misrepresentation of fact in the application for or negotiation of this Franchise.

11.2 Default Procedure. If Grantee fails to cure such default within thirty (30) Days after the giving of such notice (or if such default is of such a character as to require more than thirty (30) Days within which to cure the same, and Grantee fails to commence to cure the same within said thirty (30) Day period and thereafter fails to use reasonable diligence, in City's sole opinion, to cure such default as soon as possible), then, and in any event, such default shall be a substantial breach and City may elect to terminate the Franchise. The City may place the issue of revocation and termination of this Franchise before the governing body of City at a regular meeting. If City decides there is cause or reason to terminate, the following procedure shall be followed:

(a) City shall provide Grantee with a written notice of the reason or cause for proposed termination and shall allow Grantee a minimum of thirty (30) Days subsequent to receipt of the notice in which to correct the default.

(b) Grantee shall be provided with an opportunity to be heard at a public hearing prior to any decision to terminate this Franchise.

(c) If, after notice is given and an opportunity to cure, at Grantee's option, a public hearing is held, and the City determines there was a violation, breach, failure, refusal or neglect, the City may declare by resolution the Franchise revoked and of no further force and effect unless there is compliance within such period as the City may fix, such period may not be less than thirty (30) Days provided no opportunity for compliance need be granted for fraud or misrepresentation.

11.3 Mediation. If the Grantee and City are unable to resolve a dispute through informal negotiations during the period of thirty (30) Days following the submission of the claim giving rise to the dispute by one (1) party to the other, then unless that claim has been waived as provided in the Franchise, such claim may be subject to mediation if jointly agreed upon by both parties. Unless the Grantee and City mutually agree otherwise, such mediation shall be in accordance with the rules of the American Arbitration Association currently in effect at the time of the mediation. A party seeking mediation shall file a request for mediation with the other party to the Franchise and with the American Arbitration Association. The request may be made simultaneously with the filing of a complaint, but, in such event, mediation shall proceed in advance of legal proceedings only if the other party agrees to participate in mediation. Mutually agreed upon Mediation shall stay other enforcement remedies of the parties for a period of ninety (90) days from the date of filing, unless stayed for a longer period by agreement of the Grantee and City. The Grantee and City shall each pay one-half of the mediator's fee and any filing fees. The mediation shall be held in the City unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. Nothing herein shall serve to modify or on any way delay the franchise enforcement process set forth in Section 10 of this Franchise.

11.4 Failure to Enforce. Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the City to enforce prompt compliance, and City's failure to enforce shall not constitute a waiver of rights or acquiescence in Grantee's conduct.

11.5 Compliance with the Laws.

(a) If any federal or state law or regulation shall require or permit City or Grantee to perform any service or act or shall prohibit City or Grantee from performing any service or act which may be in conflict with the terms of this Franchise, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Grantee and City shall conform to state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and shall conform to federal laws and regulations regarding cable as they become effective.

(b) If any term, condition or provision of this Franchise or the application thereof to any Person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties. In the event such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and City.

SECTION 12 FORECLOSURE AND RECEIVERSHIP

12.1 **Foreclosure.** Upon the foreclosure or other judicial sale of the Cable System, Grantee shall notify the City of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place, and the provisions of this Franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

12.2 **Receivership.** The City shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred twenty (120) Days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) Days, or unless:

(a) Within one hundred twenty (120) Days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; and,

(b) Such receiver or trustee, within said one hundred twenty (120) Days, shall have executed an agreement, duly approved by the Court having jurisdiction in the

premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

SECTION 13 REPORTING REQUIREMENTS

13.1 Quarterly Reports. Within forty-five (45) calendar days after the end of each calendar quarter, Grantee shall submit to the City along with its Franchise Fee payment a report showing the basis for computation of such fees prepared by an officer, or designee of Grantee showing the basis for the computation of the Franchise Fees paid during that period in a form and substance substantially equivalent to Exhibit B attached hereto. This report shall separately indicate revenues received by Grantee within the City including, but not limited to such items as listed in the definition of “Gross Revenues” at Section 1 of this Franchise.

13.2 Monitoring and Compliance Reports. Upon request, but no more than once a year, Grantee shall provide a written report of any and all applicable FCC technical performance tests for the residential network required in FCC Rules and Regulations as now or hereinafter constituted. In addition, Grantee shall provide City with copies of reports of the semi-annual test and compliance procedures applicable to Grantee and established by this Franchise no later than thirty (30) Days after the completion of each series of tests.

13.3 Reports. Upon request of the City and in no event later than thirty (30) Days from the date of receipt of such request, Grantee shall, free of charge, prepare and furnish to the City, at the times and in the form prescribed that Grantee is technically capable of producing, such additional reports with respect to its operation, affairs, transactions, or property, as may be reasonably necessary to ensure compliance with the terms of this Franchise. Grantee and City may in good faith agree upon taking into consideration Grantee’s need for the continuing confidentiality as prescribed herein. Neither City nor Grantee shall unreasonably demand or withhold information requested pursuant with the terms of this Franchise.

13.4 Communications with Regulatory Agencies.

(a) Upon written request, Grantee shall submit to City copies of any pleading, applications, notifications, communications and documents of any kind, submitted by Grantee or its Affiliates to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee’s Cable System within the Franchise Area. Grantee shall submit such documents to City no later than thirty (30) Days after receipt of City’s request. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency. With respect to all other reports, documents and notifications provided to any federal, State or local regulatory agency as a routine matter in the due course of operating Grantee’s Cable System within the Franchise Area, Grantee shall make such documents available to City upon City’s written request.

(b) In addition, Grantee and its Affiliates shall within ten (10) Days of any communication to or from any judicial or regulatory agency regarding any alleged or

actual violation of this Franchise, City regulation or other requirement relating to the System, use its best efforts to provide the City a copy of the communication, whether specifically requested by the City to do so or not.

SECTION 14 CUSTOMER SERVICE POLICIES

14.1 Response to Customers and Cooperation with City. Grantee shall promptly respond to all requests for service, repair, installation and information from Subscribers. Grantee acknowledges the City's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the City to resolve complaints.

14.2 Definition of "Complaint." For the purposes of Section 14, with the exception of Subsection 14.5, a "complaint" shall mean any communication to Grantee or to the City by a Subscriber or a Person who has requested Cable Service; a Person expressing dissatisfaction with any service, performance, or lack thereof, by Grantee under the obligations of this Franchise.

14.3 Customer Service Agreement and Written Information. Grantee shall provide to Subscribers a comprehensive service agreement and information in writing for use in establishing Subscriber service. Written information shall, at a minimum, contain the following information:

- (a) Services to be provided and rates for such services.
- (b) Billing procedures.
- (c) Service termination procedure.
- (d) Change in service notifications.
- (e) Liability specifications.
- (f) Set Top Boxes/Subscriber terminal equipment policy.
- (g) How complaints are handled including Grantee's procedure for investigation and resolution of Subscriber complaints.
- (h) The name, address, and phone number of the Person identified by the City as responsible for handling cable questions and complaints for the City. This information shall be prominently displayed and Grantee shall submit the information to the City for review and approval as to its content and placement on Subscriber billing statements.
- (i) A copy of the written information shall be provided to each Subscriber at the time of initial Connection and any subsequent reconnection.

14.4 **Reporting Complaints.**

(a) The requirements of this Section 14.4 shall be subject to federal law regarding Subscriber privacy. Grantee shall maintain all Subscriber data available for City inspection. Subscriber data shall include the date, name, address, telephone number of Subscriber complaints as well as the subject of the complaint, date and type of action taken to resolve the complaint, any additional action taken by Grantee or the Subscriber. The data shall be maintained in a way that allows for simplified access of the data by the City.

(b) Subject to federal law and upon reasonable request by the City, Grantee shall, within a reasonable amount of time, provide City with such Subscriber data for its review.

14.5 Customer Service Standards. The City hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. Grantee shall, upon request, which request shall include the reason for the request (such as complaints received or other reasonable evidence of concern), provide City with information which shall describe in detail Grantee's compliance with each and every term and provision of this Section 14.5. Grantee shall comply in all respects with the customer service requirements established by the FCC and those set forth herein. To the extent that this Franchise imposes requirements greater than those established by the FCC, Grantee reserves whatever rights it may have to recover the costs associated with compliance in any manner consistent with Applicable Law.

14.6 Local Office. During the term of the Franchise the Grantee shall comply with one of the following requirements:

(a) Grantee shall maintain a convenient local customer service and bill payment location for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. Grantee shall comply with the standards and requirements for customer service set forth below during the term of this Franchise.

(b) Grantee shall maintain convenient local Subscriber service and bill payment locations for the purpose of receiving Subscriber payments or equipment returns. Unless otherwise requested by the Subscriber, Grantee shall deliver replacement equipment directly to the Subscriber at no cost to the Subscriber. The Grantee shall maintain a business office or offices for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billings disputes and similar matters. The office must be reachable by a local, toll-free telephone call, and Grantee shall provide the City with the name, address and telephone number of an office that will act as the Grantee's agent to receive complaints, regarding quality of service, equipment malfunctions, billings, and similar matters. At a minimum Grantee shall also provide the following:

(i) Subscribers can remit payments at multiple third party commercial locations within the City (such as grocery stores or the Western Union).

(ii) Grantee will provide a service technician to any Qualified Living Unit in the City, free of charge to the Subscriber, where necessary to install, replace or troubleshoot equipment issues.

(iii) Subscribers shall be able to return and receive equipment, free of charge, via national overnight courier service (such as Fed Ex or UPS) if a service technician is not required to visit the Subscriber's Qualified Living Unit.

(iv) In the event Grantee provides Cable Service to a minimum of thirty percent (30%) of the total number of Cable Service Subscribers in the City served by cable operators franchised by the City, the Grantee shall then be required to also comply with the requirements of Section 14.6 (a) above.

14.7 Cable System office hours and telephone availability.

(a) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a Day, seven (7) Days a week.

(i) Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

(ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business Day.

(b) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(c) Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(d) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(e) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

14.8 Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(a) Standard Installations will be performed within seven (7) business days after an order has been placed. “Standard” Installations are those to a Qualified Living Unit.

(b) Excluding conditions beyond the control of Grantee, Grantee will begin working on “Service Interruptions” promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business Day after notification of the Service problem.

(c) The “appointment window” alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(d) Grantee may not cancel an appointment with a customer after the close of business on the business Day prior to the scheduled appointment.

(e) If Grantee’s representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

14.9 Communications between Grantee and Subscribers.

(a) Refunds. Refund checks will be issued promptly, but no later than either:

(i) The customer’s next billing cycle following resolution of the request or thirty (30) Days, whichever is earlier, or

(ii) The return of the equipment supplied by Grantee if Cable Service is terminated.

(b) Credits. Credits for Cable Service will be issued no later than the customer’s next billing cycle following the determination that a credit is warranted.

14.10 Billing.

(a) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Cable Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, Grantee must respond to a written complaint from a Subscriber within thirty (30) Days.

14.11 Subscriber Information. Grantee will provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

- (a) Products and Services offered;
- (b) Prices and options for programming services and conditions of subscription to programming and other services;
- (c) Installation and Service maintenance policies;
- (d) Instructions on how to use the Cable Service;
- (e) Channel positions of programming carried on the System; and
- (f) Billing and complaint procedures, including the address and telephone number of the City's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by Grantee, including the address of the responsible officer of the City. Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) Days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers thirty (30) Days in advance of any significant changes in the information required by this Section 14.11.

14.12 Notice or Rate Programming Change. In addition to the requirement of this Section 14.12 regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Grantee shall give thirty (30) Days written notice to both Subscribers and the City before implementing any rate or Service change. If required by Applicable Law, such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, Grantee need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

14.13 Subscriber Contracts. Grantee shall, upon written request, provide the City with any standard form residential Subscriber contract utilized by Grantee. If no such written contract exists, Grantee shall file with the City a document completely and concisely stating the length and terms of the Subscriber contract offered to customers. The length and terms of any standard form Subscriber contract(s) shall be available for public inspection during Normal Business Hours. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with City and shall be available for public inspection.

14.14 Refund Policy. If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, Grantee shall, upon request by

the Subscriber, credit such Subscriber pro rata for such interruption. For this purpose, every month will be assumed to have thirty (30) Days.

14.15 Late Fees. Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that Grantee imposes upon a Subscriber for late payment of a bill. The City reserves the right to enforce Grantee's compliance with all Applicable Laws to the maximum extent legally permissible.

14.16 Disputes. All Subscribers and members of the general public may direct complaints, regarding Grantee's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or Commission of the City.

14.17 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 14.10, above, Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

14.18 Failure to Resolve Complaints. Grantee must investigate and act upon any service complaint promptly and in no event later than twenty-four (24) hours after the problem becomes known. Grantee must address, and if feasible, resolve service complaints within three (3) calendar days.

14.19 Maintain a Complaint Phone Line. Grantee shall maintain a local or toll-free telephone Subscriber complaint line, available to its Subscribers twenty-four (24) hours per Day, seven (7) Days a week.

14.20 Notification of Complaint Procedure. Grantee shall have printed clearly and prominently on each Subscriber bill and in the customer service agreement provided for in Section 14.3, the twenty-four (24) hour Grantee phone number for Subscriber complaints. Additionally, Grantee shall provide information to customers concerning the procedures to follow when they are unsatisfied with measures taken by Grantee to remedy their complaint. This information will include the phone number of the City office or Person designated to handle complaints. Additionally, where possible Grantee shall state that complaints should be made to Grantee prior to contacting the City.

14.21 Subscriber Privacy.

(a) To the extent required by Minn. Stat. §238.084 Subd. 1(s) Grantee shall comply with the following: No signals including signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the Subscriber. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed

one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(b) No information or data obtained by monitoring transmission of a signal from a Subscriber terminal, including but not limited to lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers shall be sold or otherwise made available to any party other than to Grantee or its agents for Grantee's business use, and also to the Subscriber subject of that information, unless Grantee has received specific written permission from the Subscriber to make such data available. The request for permission must be contained in a separate document with a prominent statement that the Subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which may be renewed at the option of the Subscriber. No penalty shall be invoked for a Subscriber's failure to provide or renew such permission. The permission shall be revocable at any time by the Subscriber without penalty of any kind whatsoever.

(c) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in subparagraph (b) of this section.

14.22 Grantee Identification. Grantee shall provide all customer service technicians and all other Grantee employees entering private property with appropriate picture identification so that Grantee employees may be easily identified by the property owners and Subscribers.

SECTION 15 SUBSCRIBER PRACTICES

15.1 Subscriber Rates. There shall be no charge for disconnection of any installation or outlet. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber's service outlet, provided, however, that such disconnection shall not be effected until after the later of: (i) forty-five (45) Days after the original due date of said delinquent fee or charge; or (ii) ten (10) Days after delivery to Subscriber of written notice of the intent to disconnect. If a Subscriber pays before expiration of the later of (i) or (ii), Grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall promptly reinstate the Subscriber's Cable Service.

15.2 Refunds to Subscribers shall be made or determined in the following manner:

(a) If Grantee fails, upon request by a Subscriber, to provide any service then being offered, Grantee shall promptly refund all deposits or advance charges paid for the service in question by said Subscriber. This provision does not alter Grantee's responsibility to Subscribers under any separate contractual agreement or relieve Grantee of any other liability.

(b) If any Subscriber terminates any monthly service because of failure of Grantee to render the service in accordance with this Franchise, Grantee shall refund to such Subscriber the proportionate share of the charges paid by the Subscriber for the services not received. This provision does not relieve Grantee of liability established in other provisions of this Franchise.

(c) If any Subscriber terminates any monthly service prior to the end of a prepaid period, a proportionate amount of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by Grantee.

SECTION 16 COMPENSATION AND FINANCIAL PROVISIONS.

16.1 Franchise Fees. During the term of the Franchise, Grantee shall pay to the City a Franchise Fee of five percent (5%) of Gross Revenues. If any such law, regulation or valid rule alters the five percent (5%) Franchise Fee ceiling enacted by the Cable Act, then the City shall have the authority to (but shall not be required to) increase the Franchise Fee accordingly, provided such increase is for purposes not inconsistent with Applicable Law. In the event Grantee bundles or combines Cable Services (which are subject to the Franchise Fee) with non-Cable Services (which are not subject to the Franchise Fee) so that Subscribers pay a single fee for more than one (1) class of service resulting in a discount on Cable Services, Grantee agrees that for the purpose of calculation of the Franchise Fee, it shall allocate to Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

(a) Franchise Fees shall be paid quarterly not later than forty-five (45) Days following the end of a given quarter. In accordance with Section 16 of this Franchise, Grantee shall file with the City a Franchise Fee payment worksheet, attached as Exhibit B, signed by an authorized representative of Grantee, which identifies Gross Revenues earned by Grantee during the period for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this section.

(b) Neither current nor previously paid Franchise Fees shall be subtracted from the Gross Revenue amount upon which Franchise Fees are calculated and due for any period, unless otherwise required by Applicable Law.

(c) Any Franchise Fees owing pursuant to this Franchise which remain unpaid more than forty-five (45) Days after the dates specified herein shall be delinquent and shall thereafter accrue interest at twelve percent (12%) per annum or two percent (2%) above prime lending rate as quoted by the Wall Street Journal, whichever is greater.

(d) In no event shall the Grantee be required to pay a Franchise Fee percentage in excess of that paid by incumbent cable provider.

16.2 Auditing and Financial Records. Throughout the term of this Franchise, the Grantee agrees that the City, upon reasonable prior written notice of not less than twenty (20) Days to the Grantee, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise. Grantee shall provide such requested information as soon as possible and in no event more than thirty (30) Days after the notice unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Grantee for a minimum period of six (6) years, pursuant to Minnesota Statutes Section 541.05. The Grantee shall not deny the City access to any of the Grantee's records on the basis that the Grantee's records are under the control of any parent corporation, Affiliated entity or a third party. The City may request in writing copies of any such records or books that are reasonably necessary, and the Grantee shall provide such copies within thirty (30) Days of the receipt of such request. One (1) copy of all reports and records required under this or any other section shall be furnished to the City at the sole expense of the Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the Grantee may request, in writing within ten (10) Days of receipt of such request, that the City inspect them at the Grantee's local offices or at one of Grantee's offices more convenient to City or its duly authorized agent. If any books or records of the Grantee are not kept in such office and not made available in copies to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary for the enforcement of this Franchise, then all reasonable travel expenses incurred in making such examination shall be paid by the Grantee.

16.3 Review of Record Keeping Methodology. Grantee agrees to meet with representative of the City upon request to review its methodology of record-keeping, financial reporting, computing Franchise Fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records related to the Franchise.

16.4 Audit of Records. The City or its authorized agent may at any time and at the City's own expense conduct an independent audit of the revenues of Grantee in order to verify the accuracy of Franchise Fees paid to the City. Grantee shall cooperate fully in the conduct of such audit and shall produce all necessary records related to the provision of Cable Services regardless of which corporate entity controls such records. In the event it is determined through such audit that Grantee has underpaid Franchise Fees in an amount of five percent (5%) or more than was due the City, then Grantee shall reimburse the City for the entire reasonable cost of the audit within thirty (30) days of the completion and acceptance of the audit by the City.

16.5 Records to be reviewed. The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of the Franchise.

16.6 Indemnification by Grantee.

(a) Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damage or otherwise except those arising wholly from negligence on the part of the City or its employees; for actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of Grantee or its officers, agents, employees, or contractors or to which Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute, and whether or not such acts or omissions were authorized or contemplated by this Franchise or Applicable Law; arising out of or alleged to arise out of any claim for damages for Grantee's invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person, firm or corporation; arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any Applicable Law. Nothing herein shall be deemed to prevent the City, its officers, or its employees from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against the City, its officers, or its employees.

(b) Grantee shall contemporaneously with this Franchise execute an Indemnity Agreement in a form acceptable to the City attached hereto as Exhibit C, which shall indemnify, defend and hold the City harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses arising out of the actions of the City in granting this Franchise. This obligation includes any claims by another franchised cable operator against the City that the terms and conditions of this Franchise are less burdensome than another franchise granted by the City or that this Franchise does not satisfy the requirements of Applicable Law(s).

16.7 Grantee Insurance. Upon the Effective Date, Grantee shall, at its sole expense take out and maintain during the term of this Franchise public liability insurance with a company licensed to do business in the state of Minnesota with a rating by A.M. Best & Co. of not less than "A-" that shall protect the Grantee, City and its officials, officers, directors, employees and agents from claims which may arise from operations under this Franchise, whether such operations be by the Grantee, its officials, officers, directors, employees and agents or any subcontractors of Grantee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from Grantee's vehicles, products and operations. The amount of insurance for single limit coverage applying to bodily and personal injury and property damage shall not be less than Three Million Dollars (\$3,000,000). The liability policy shall include:

(a) The policy shall provide coverage on an "occurrence" basis.

- (b) The policy shall cover personal injury as well as bodily injury.
- (c) The policy shall cover blanket contractual liability subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.
- (d) Broad form property damage liability shall be afforded.
- (e) City shall be named as an additional insured on the policy.
- (f) An endorsement shall be provided which states that the coverage is primary insurance with respect to claims arising from Grantee's operations under this Franchise and that no other insurance maintained by the Grantor will be called upon to contribute to a loss under this coverage.
- (g) Standard form of cross-liability shall be afforded.
- (h) An endorsement stating that the policy shall not be canceled without thirty (30) Days notice of such cancellation given to City
- (i) City reserves the right to adjust the insurance limit coverage requirements of this Franchise no more than once every three (3) years. Any such adjustment by City will be no greater than the increase in the State of Minnesota Consumer Price Index (all consumers) for such three (3) year period.
- (j) Upon the Effective Date, Grantee shall submit to City a certificate documenting the required insurance, as well as any necessary properly executed endorsements. The certificate and documents evidencing insurance shall be in a form acceptable to City and shall provide satisfactory evidence that Grantee has complied with all insurance requirements. Renewal certificates shall be provided to City prior to the expiration date of any of the required policies. City will not be obligated, however, to review such endorsements or certificates or other evidence of insurance, or to advise Grantee of any deficiencies in such documents and receipt thereof shall not relieve Grantee from, nor be deemed a waiver of, City's right to enforce the terms of Grantee's obligations hereunder. City reserves the right to examine any policy provided for under this paragraph or to require further documentation reasonably necessary to form an opinion regarding the adequacy of Grantee's insurance coverage.

SECTION 17

MISCELLANEOUS PROVISIONS.

17.1 Posting and Publication. Grantee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Grantee's filing of acceptance of this Franchise.

17.2 Guarantee of Performance. Grantee agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the City of a five (5) year

Franchise. Performance pursuant to the terms and conditions of this Franchise is guaranteed by Grantee.

17.3 Entire Agreement. This Franchise contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties. This Franchise is made pursuant to Minnesota Statutes Chapter 238 and is intended to comply with all requirements set forth therein.

17.4 Consent. Wherever the consent or approval of either Grantee or the City is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

17.5 Franchise Acceptance. No later than forty-five (45) Days following City Council approval of this Franchise, Grantee shall execute and return to the City three (3) original franchise agreements. The executed agreements shall be returned to the City accompanied by performance bonds, and evidence of insurance, all as provided in this Franchise. The City's "Notice of Intent to Consider an Application for a Franchise" ("Notice") provided, consistent with Minn. Stat. 238.081 subd. 8, that applicants would be required to reimburse the City for all necessary costs of processing a cable communications franchise. Grantee submitted an application fee with its application to the City. The Notice further provided that any unused portion of the application fee would be returned and any additional fees required to process the application and franchise, beyond the application fee, would be assessed to the successful applicant. The Grantee shall therefore submit to the City at the time of acceptance of this Franchise, a check made payable to the City of Richfield, Minnesota for all additional fees and costs incurred by the City. Within thirty (30) days of City Council approval, the City shall provide Grantee with a letter specifying such additional costs following approval of this Franchise by the City Council. In the event Grantee fails to accept this Franchise, or fails to provide the required documents and payments, this Franchise shall be null and void. The Grantee agrees that despite the fact that its written acceptance may occur after the Effective Date, the obligations of this Franchise shall become effective on the Effective Date.

17.6 Amendment of Franchise. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 2.7 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws; provided, however, nothing herein shall restrict City's exercise of its police powers.

17.7 Notice. Any notification that requires a response or action from a party to this Franchise, within a specific time-frame or would trigger a timeline that would affect one or both parties' rights under this Franchise, shall be made in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the City:	City Manager, City of Richfield 6700 Portland Avenue Richfield, MN 55423
Courtesy Copy to:	Southwest Suburban Cable Commission c/o Moss & Barnett (BTG) 150 South Fifth Street, Suite 1200 Minneapolis, MN 55402
To the Grantee:	CenturyLink Attn: Public Policy 1801 California Street, 10 th Floor Denver, Colorado 80202
Courtesy Copy to:	Qwest Broadband Services, Inc. Attn: Public Policy 200 South Fifth Street, 21 st Floor Minneapolis, MN 55402

Recognizing the widespread usage and acceptance of electronic forms of communication, emails will be acceptable as formal notification related to the conduct of general business amongst the parties to this contract, including but not limited to programming and price adjustment communications. Such communication should be addressed and directed to the Person of record as specified above.

17.8 Force Majeure. In the event that either party is prevented or delayed in the performance of any of its obligations, under this Franchise by reason of acts of God, floods, fire, hurricanes, tornadoes, earthquakes, or other unavoidable casualties, insurrection, war, riot, vandalism, strikes, delays in receiving permits where it is not the fault of Grantee, public easements, sabotage, acts or omissions of the other party, or any other similar event beyond the reasonable control of that party, it shall have a reasonable time under the circumstances to perform such obligation under this Franchise, or to procure a substitute for such obligation to the reasonable satisfaction of the other party.

17.9 Work of Contractors and Subcontractors. Work by contractors and subcontractors are subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise, the City Code and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise, the City Code and other Applicable Laws governing the work performed by them.

17.10 Abandonment of System. Grantee may not abandon the System or any portion thereof used exclusively for Cable Services, without having first given three (3) months written notice to City and conforming to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. To the extent required by Minn. Stat. §238.084 Subd. 1 (w), Grantee shall compensate City for damages resulting from the abandonment.

17.11 Removal After Abandonment. In the event of Grantee's abandonment of the System used exclusively for Cable Services, City shall have the right to require Grantee to conform to the City Code, as well as the state right-of-way rules, Minn. Rules, Chapter 7819. If Grantee has failed to commence removal of System, or such part thereof as was designated by City, within thirty (30) Days after written notice of City's demand for removal consistent with City Code and Minn. Rules, Ch. 7819, is given, or if Grantee has failed to complete such removal within twelve (12) months after written notice of City's demand for removal is given City shall have the right to apply funds secured by the performance bond toward removal and/or declare all right, title, and interest to the System to be in City with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it.

17.12 Governing Law. This Franchise shall be deemed to be executed in the State of Minnesota, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Minnesota, as applicable to contracts entered into and performed entirely within the State.

17.13 Nonenforcement by City. Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City or to enforce prompt compliance.

17.14 Captions. The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.

17.15 Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last Day of the prescribed or fixed period or duration of time. When the last Day of the period falls on Saturday, Sunday or a legal holiday that Day shall be omitted from the computation and the next business Day shall be the last Day of the period.

17.16 Survival of Terms. Upon the termination or forfeiture of the Franchise, Grantee shall no longer have the right to occupy the Streets for the purpose of providing Cable Service. However, Grantee's obligations to the City (other than the obligation to provide service to Subscribers) shall survive according to their terms.

17.17 Competitive Equity. If any other Wireline MVPD enters into any agreement with the City to provide multi channel video programming or its equivalent to residents in the City, the City, upon written request of the Grantee, shall permit the Grantee to construct and/or operate its Cable System and provide multi channel video programming or its equivalent to Subscribers

in the City under the same agreement as applicable to the new MVPD. Within one hundred twenty (120) Days after the Grantee submits a written request to the City, the Grantee and the City shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the new Wireline MVPD.

Passed and adopted this ____ day of _____ 201__.

ATTEST

CITY OF RICHFIELD, MINNESOTA

By: _____
Its: City Clerk

By: _____
Its: Mayor

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

**QWEST BROADBAND SERVICES, INC.,
D/B/A CENTURYLINK**

Date: _____

By: _____

Its: _____

SWORN TO BEFORE ME this
____ day of _____, 201__.

NOTARY PUBLIC

Exhibit A
Free Cable Service to Public Buildings

1.	ADMIN SERV DEPT,RICHFIELD	6700 PORTLAND AVE APT ASD
2.	ELEMENTARY,SHERIDAN	6400 SHERIDAN AVE S
3.	FIRE STATION 2,RICHFIELD	6401 PENN AVE S
4.	LUTHERAN SCHOOL,MT CALVRY	6541 16TH AVE S
5.	SCHOOL,HOLY ANGELS	6600 NICOLLET AVE
6.	CITY HALL,RICHFIELD	6700 PORTLAND AVE APT HALL
7.	FIRE STATION,RICHFIELD	6700 PORTLAND AVE APT 1
8.	PUB SAFETY,RICHFIELD	6700 PORTLAND AVE APT EOC
9.	ICE ARENA,RICHFIELD	636 E 66TH ST
10.	HIGH SCHOOL,RICHFIELD	7001 HARRIET AVE
11.	COMMUNITY CENTER,RICHFIELD	7000 NICOLLET AVE
12.	LIBRARY,AUGSBERG	7100 NICOLLET AVE
13.	STEM,RICHFIELD	7020 12TH AVE S
14.	RDLS DUAL LAN,RICHFIELD ED	7001 ELLIOT AVE S
15.	ELEM SCHOOL,CENTENNIAL	7315 BLOOMINGTON AVE
16.	JUNIOR HIGH,RICHFIELD	7461 OLIVER AVE S
17.	EXTENDED CAMPUS,SEC	7450 PENN AVE S
18.	SCHOOL,BLESSED T CATHOLIC	7540 PENN AVE S
19.	SCHOOL GARAGE,RICHFIELD	300 W 72ND ST
20.	ACADEMY,ZOE	7101 NICOLLET AVE
21.	MAINT FACILITY,RICHFIELD	1901 E 66TH ST
22.	SPECIAL ED,CENTRAL SCHOOL	7145 HARRIET AVE

Exhibit B
Franchise Fee Payment Worksheet

TRADE SECRET – CONFIDENTIAL

	Month/Year	Month/Year	Month/Year	Total
A la Carte Video Services				
Audio Services				
Basic Cable Service				
Installation Charge				
Bulk Revenue				
Expanded Basic Cable Service				
Pay Service				
Pay-per-view				
Guide Revenue				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Other Revenue				
Equipment Rental				
Processing Fees				
PEG Fee				
FCC Fees				
Bad Debt				
Late Fees				
REVENUE				
Fee Calculated				

Fee Factor: 5%

Exhibit C
Indemnity Agreement

INDEMNITY AGREEMENT made this ____ day of _____, 20__, by and between Qwest Broadband Services, Inc., a Delaware Corporation, party of the first part, hereinafter called "CenturyLink," and the City of Richfield, a Minnesota Municipal Corporation, party of the second part, hereinafter called "City."

WITNESSETH:

WHEREAS, the City of Richfield has awarded to Qwest Broadband Services, Inc. a franchise for the operation of a cable communications system in the City of Richfield; and

WHEREAS, the City has required, as a condition of its award of a cable communications franchise, that it be indemnified with respect to all claims and actions arising from the award of said franchise,

NOW THEREFORE, in consideration of the foregoing promises and the mutual promises contained in this agreement and in consideration of entering into a cable television franchise agreement and other good and valuable consideration, receipt of which is hereby acknowledged, CenturyLink hereby agrees, at its sole cost and expense, to fully indemnify, defend and hold harmless the City, its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities and judgments for damages, cost or expense (including, but not limited to, court and appeal costs and reasonable attorneys' fees and disbursements assumed or incurred by the City in connection therewith) arising out of the actions of the City in granting a franchise to CenturyLink. This includes any claims by another franchised cable operator against the City that the terms and conditions of the CenturyLink franchise are less burdensome than another franchise granted by the City or that the CenturyLink Franchise does not satisfy the requirements of applicable federal, state, or local law(s). The indemnification provided for herein shall not extend or apply to any acts of the City constituting a violation or breach by the City of the contractual provisions of the franchise ordinance, unless such acts are the result of a change in applicable law, the order of a court or administrative agency, or are caused by the acts of CenturyLink.

The City shall give CenturyLink reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this agreement. The City shall cooperate with CenturyLink in the defense of any such action, suit or other proceeding at the request of CenturyLink. The City may participate in the defense of a claim, but if CenturyLink provides a defense at CenturyLink's expense then CenturyLink shall not be liable for any attorneys' fees, expenses or other costs that City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is required. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest, in accordance with the Minnesota Rules of Professional Conduct, between the City and the counsel selected by CenturyLink to represent the City, CenturyLink shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the City in defending itself with regard to any action, suit or proceeding indemnified by CenturyLink. Provided, however, that in the event that such separate representation is or becomes necessary,

and City desires to hire counsel or any other outside experts or consultants and desires CenturyLink to pay those expenses, then City shall be required to obtain CenturyLink's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the parties agree that the City may utilize at any time, at its own cost and expense, its own City Attorney or outside counsel with respect to any claim brought by another franchised cable operator as described in this agreement.

The provisions of this agreement shall not be construed to constitute an amendment of the cable communications franchise ordinance or any portion thereof, but shall be in addition to and independent of any other similar provisions contained in the cable communications franchise ordinance or any other agreement of the parties hereto. The provisions of this agreement shall not be dependent or conditioned upon the validity of the cable communications franchise ordinance or the validity of any of the procedures or agreements involved in the award or acceptance of the franchise, but shall be and remain a binding obligation of the parties hereto even if the cable communications franchise ordinance or the grant of the franchise is declared null and void in a legal or administrative proceeding.

It is the purpose of this agreement to provide maximum indemnification to City under the terms set out herein and, in the event of a dispute as to the meaning of this Indemnity Agreement, it shall be construed, to the greatest extent permitted by law, to provide for the indemnification of the City by CenturyLink. This agreement shall be a binding obligation of and shall inure to the benefit of, the parties hereto and their successor's and assigns, if any.

QWEST BROADBAND SERVICES, INC.

Dated: _____, 20__

By: _____

Its: _____

STATE OF LOUISIANA)
) SS
)

The foregoing instrument was acknowledged before me this _____ day of _____ 20__, by _____, the _____ of Qwest Broadband Services, Inc., a Delaware Corporation, on behalf of the corporation.

Notary Public
Commission Expires _____

CITY OF RICHFIELD, MINNESOTA

By _____
Its _____

MEMORANDUM

To: City Council of the City of Richfield, Minnesota
From: Brian Grogan
Date: December 21, 2015
Re: Competition in Cable Communications Franchising

Executive Summary

The City of Richfield, Minnesota ("City") is considering granting a competitive cable franchise to Qwest Broadband Services, Inc., d/b/a CenturyLink ("CenturyLink") in a service area for which Comcast holds an existing franchise. This memorandum is intended to assist the City Council ("Council") in its consideration of the proposed Ordinance Granting a Competitive Cable Franchise for Qwest Broadband Services, Inc., d/b/a CenturyLink ("CenturyLink Franchise") by summarizing the legal issues surrounding its terms that relate to competition in the cable communications industry.

Details

The Southwest Suburban Cable Commission ("Commission") adopted Resolution No. 2015-1 enclosed as Exhibit 1 finding CenturyLink to be legally, technically, and financially qualified to provide cable communications services to residents of the City. In connection with that finding, the Commission authorized City staff to negotiate with CenturyLink to determine if mutually agreeable terms for such a franchise could be reached. Those negotiations are now complete and have resulted in the proposed CenturyLink Franchise enclosed as Exhibit 2. City staff has also prepared for the Council's review and consideration, written "findings of fact," enclosed as Exhibit 3, setting forth the factual and legal basis for the grant of the CenturyLink

Franchise and the impact of relevant State and federal competitive cable franchise laws and regulations.

Build-out

To help promote competition in and minimize unnecessary regulatory burdens on the cable communications industry, the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and Telecommunications Act of 1996 (the "Cable Act") prohibits local franchising authorities from granting exclusive cable communications franchises or unreasonably refusing to award an additional franchise to a qualified applicant.¹ The Federal Communications Commission ("FCC"), which administers the Cable Act, addressed competitive cable franchising in its 2007 *Report and Order and Further Notice of Rulemaking* (generally referred to as the "621 Order" after its subject, Section 621 of the legislation that became the Cable Act). The 621 Order explained that an unreasonable refusal in contravention of the Cable Act could occur not only by outright denial of a franchise application, but also by creating conditions that operate as de facto denials.

One variety of de facto denial addressed by the 621 Order is the imposition of unreasonable build out requirements that act as a barrier for an additional cable provider to enter a market with an existing franchise:

Build-out requirements deter market entry because a new entrant generally must take customers from the incumbent cable operator Because the second provider realistically cannot count on acquiring a share of the market similar to the incumbent's share, the second entrant cannot justify a large initial deployment. Rather, a new entrant must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding.²

¹ 47 U.S.C. § 541(a)(1).

² 621 Order at ¶ 35.

The 621 Order did not prohibit all build out requirements, but instead provided examples of unreasonable build out requirements—and of reasonable ones, such as a small initial deployment and required expansion triggered by market success.³

Minnesota Statutes Chapter 238, which establishes statewide cable communications requirements, also addresses build out by requiring “a provision in initial franchises identifying . . . a schedule showing: . . . that construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise.”⁴ CenturyLink takes the position that Minnesota’s five-year build out requirement is unreasonable under the 621 Order and is therefore preempted by the federal law. Comcast disagrees and points to the FCC’s recent reaffirmation that the 621 Order’s rulings “were intended to apply only to the local franchising process and not to franchising laws and decisions at the state level.”⁵

The CenturyLink Franchise addresses this issue by requiring a modest initial deployment (at least 15% of the service area within two years) and linking build out requirements to market-success benchmarks that CenturyLink must use its best efforts to meet, but granting the City sole discretion to determine, at the end of five years, whether CenturyLink has fulfilled its build out obligations to qualify for renewal of the franchise.⁶

Competitive Equity

The Minnesota cable communications statutes also contain a general level-playing-field (i.e., “competitive equity”) provision that requires that an additional franchise include no terms or conditions “more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or

³ *Id.* at ¶ 89-90.

⁴ Minn. Stat. § 238.084, subd. 1(m).

⁵ 621 Order at ¶ 7, cited in letter dated May 4, 2015

⁶ CenturyLink Franchise §2.6.

(3) franchise fees.”⁷ Minnesota courts have interpreted this provision as requiring “substantially similar”—rather than identical—terms.⁸ Several attempts have been made to ensure that the CenturyLink Franchise is substantially similar to Comcast’s existing franchise: first, the Comcast franchise served as the base document for negotiation of the CenturyLink Franchise; second, the franchise fees required by the CenturyLink Franchise are identical to those required by Comcast’s franchise; third, the geographic area (after complete build-out) of the CenturyLink Franchise matches the area specified in Comcast’s franchise; and fourth, the CenturyLink Franchise requires CenturyLink to require substantially similar—if not greater—public, educational, and governmental access.

Findings of Fact

As previously indicated, whether the Council ultimately grants or denies the proposed CenturyLink Franchise, it must examine all of the evidence presented to it, weigh the facts, and apply the correct legal standards. Enclosed as Exhibit 3 are draft findings of fact generally supporting a decision to approve the CenturyLink Franchise. With the caveat that best practices dictate that the final findings of fact should respond to any evidence or argument against approval, the attached findings of fact may serve as a useful starting point if the Council elects to grant CenturyLink the franchise it seeks.

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⁷ Minn. Stat. § 238.08, subd. 1(b).

⁸ See *WH Link, LLC v. City of Otsego*, 664 N.W.2d 390, 396 (Minn. Ct. App. 2003).

EXHIBIT 1

Southwest Suburban Cable Commission Resolution 2015-1

EXHIBIT 2

CenturyLink Franchise

EXHIBIT 3
Findings of Fact

**CITY OF RICHFIELD, MINNESOTA
RESOLUTION NO. _____**

**Regarding an Ordinance Granting a Competitive Cable Franchise
for Qwest Broadband Services, Inc., d/b/a CenturyLink**

RECITALS:

WHEREAS, the City of Richfield, Minnesota makes the following FINDINGS OF FACT:

1. In October 2014, Qwest Broadband Services, Inc., d/b/a CenturyLink, Inc. (“CenturyLink”) requested that the City of Richfield, Minnesota (“City”) initiate proceedings to consider awarding it a franchise to provide cable communications services in the City (“Service Territory”).
2. Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc. (“Comcast”) holds a non-exclusive cable communications franchise for the Service Territory (“Comcast Franchise”).
3. The Comcast Franchise, which the City last renewed in August 2012, is currently the only cable communications franchise for the Service Territory.
4. The monopoly held by a sole cable communication provider in a particular market is a barrier to entry for additional providers, which does not have a captive market but must instead “win” every subscriber.¹
5. The presence of a second cable operator in a market improves the quality of service offerings and drives down prices by approximately 15%.²
6. On April 2 and April 9, 2015, the City published a Notice of Intent to Franchise a Cable Communications System (“Notice”) in the Sun Current, a newspaper of general circulation in the Service Territory.
7. The Notice indicated that the City was soliciting franchise applications and provided information regarding the application process, including that applications were required to be submitted on or before April 24, 2015 and that a public hearing to hear proposals from applicants would be held May 12, 2015 at 7:00 PM.
8. The City also mailed copies of the Notice and application materials to CenturyLink and Comcast.³

¹ *In the Matter of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 05-311, at ¶ 138 (Rel. Mar. 5, 2007) (“621 Order”).

² *Id.* at ¶¶ 2, 50.

9. On April 24, 2015, the City received an application from CenturyLink (the “CenturyLink Application”). The City did not receive any other applications.
10. As provided by the Notice, on May 12, 2015 the City held a public hearing during the City Council’s regularly scheduled meeting to consider CenturyLink’s application and qualifications.
11. On May 4, 2015, Comcast submitted a letter to the City setting forth its position regarding the CenturyLink Application (“Comcast Letter”).⁴
12. The Comcast Letter expresses concern about how CenturyLink’s proposal compared to particular provisions of the existing Comcast Franchise.⁵
13. The Comcast Letter also summarizes Comcast’s position regarding build-out requirements and other proposed terms related to competition in the cable industry.⁶
14. During the hearing, CenturyLink presented its proposal and all other interested parties were provided an opportunity to speak and present information to the City Council regarding the CenturyLink Application.
15. Following the hearing, the law firm of Moss & Barnett, a Professional Association prepared a report, dated June 1, 2015 (“Franchise Report”), reviewing and analyzing the City’s franchising procedures, the CenturyLink Application and other information provided by CenturyLink in connection with the May 18, 2015 public hearing.⁷
16. The Franchise Report identifies and discusses federal and state legal requirements relevant to the City’s consideration of the CenturyLink Application, including laws pertaining to franchising procedures and competition between providers.⁸
17. The Franchise Report also analyzes information provided by CenturyLink to establish its qualifications to operate a cable communications franchise in the Service Territory.⁹
18. At its meeting on October 28, 2015, the Southwest Suburban Cable Commission (“Commission”) considered the Franchise Report along with the information and documentation it had received regarding the CenturyLink Application, and adopted Resolution 2015-1 finding and concluding that the CenturyLink Application complied with the requirements of Minn. Stat. § 238.081 and that CenturyLink is legally,

³ Notice by the City of Richfield, Minnesota of Its Intent to Consider An Application for a Franchise and Request for Proposals - Official Application Form

⁴ See May 4, 2015 letter from Emmett Coleman to Brian Grogan, Franchise Administrator of the Southwest Suburban Cable Commission regarding CenturyLink Video Franchise Application.

⁵ *Id.* at 2.

⁶ *Id.* at 1-2.

⁷ Report to the Southwest Suburban Cable Commission Regarding Qwest Broadband Services, Inc. d/b/a/ CenturyLink – Proposal for a Cable Communication Franchise, June 1, 2015.

⁸ Franchise Report at 2-9.

⁹ *Id.* at 11-12.

technically, and financially qualified to operate a cable communications system within the Service Territory.

19. In Minnesota, both State and federal law govern the terms and conditions of an additional cable communications franchise in an already-franchised service area.¹⁰
20. The franchising authority may not grant an exclusive franchise or unreasonably refuse to award an additional competitive franchise.¹¹
21. The franchising authority must allow an applicant reasonable time to become capable of providing cable service to all households in the service area.¹²
22. The franchising authority may grant an additional franchise in an already-franchised service area if the terms and conditions of the additional franchise are not “more favorable or less burdensome than those in the existing franchise” regarding the area served, the PEG access requirements, and franchise fees.¹³
23. The additional franchise must also include, among other things, “a schedule showing . . . that the construction throughout the authorized franchise area must be substantially completed within five years of the granting of the franchise.”¹⁴
24. In order to ensure that any additional franchise granted to CenturyLink would contain substantially similar service area, PEG access requirements, and franchise fees to the Comcast Franchise, the City used the Comcast Franchise as the base document for its negotiations.
25. On [date], the City Council gave notice that it intended to introduce an ordinance granting a cable communications franchise to CenturyLink.
26. On [date], the City Council introduced Ordinance No. _____, an Ordinance of the City of Richfield Granting a Cable Communications Franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink Franchise”).
27. Copies of the CenturyLink Franchise were made available to the public, including Comcast, on [date].
28. The CenturyLink Franchise encompasses the same Service Territory encompassed by the Comcast Franchise.¹⁵
29. The franchise fees required by the CenturyLink Franchise are identical to those required by the Comcast Franchise.¹⁶

¹⁰ See 47 U.S.C. § 541(a)(1); Minn. Stat. §§ 238.08, .084; *see also* Franchise Report at 2-8.

¹¹ 47 U.S.C. § 541(a)(1).

¹² 47 U.S.C. § 541(a)(4).

¹³ Minn. Stat. § 238.08, subd. 1(b).

¹⁴ Minn. Stat. § 238.84, subd. 1(m).

¹⁵ CenturyLink Franchise § 2.4; Comcast Franchise § 2.4.

30. The PEG access requirements in the CenturyLink Franchise mandate certain obligations, such as HD channel capacity for all PEG channels that go beyond the commitments made in the Comcast franchise.¹⁷
31. The City recognizes that CenturyLink, which currently offers no cable communications services in the Service Territory, cannot justify a large initial deployment because it “realistically cannot count on acquiring a share of the market similar to Comcast’s share . . . [and] must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding.”¹⁸
32. The CenturyLink Franchise therefore requires CenturyLink’s initial deployment to be capable of serving at least 15% of the living units in the Service Territory within two years.
33. The CenturyLink Franchise permits the City to monitor CenturyLink’s progress and compliance with build-out requirements via quarterly meeting and accelerates the build-out schedule if CenturyLink has market success, with the goal and expectation that build-out will be substantially complete before the CenturyLink Franchise’s five-year term expires.¹⁹
34. During its regularly scheduled meeting on January 12, 2016, the City Council will hold a public hearing at which all interested parties are provided an opportunity to speak and present information regarding the proposed CenturyLink Franchise.

WHEREAS, the City has considered these facts and the cable-related needs and interests of the community:

NOW THEREFORE, the City Council for the City of Richfield, Minnesota hereby resolves as follows:

1. The foregoing findings are adopted as the official findings of the City Council and made a part of the official record.
2. The City has authority to adopt an ordinance granting a cable communications franchise to CenturyLink for the Service Territory.
3. The City may not unreasonably refuse to award a competitive cable communications franchise to CenturyLink.
4. The City and its residents will benefit from adoption of the CenturyLink Franchise, which will introduce facilities-based competition into the cable communications market in the Service Territory and thereby reduce costs to consumers and increase the quality and availability of services.

¹⁶ CenturyLink Franchise § 16.1; Comcast Franchise § 16.1.

¹⁷ CenturyLink Franchise § 7; Comcast Franchise § 7.

¹⁸ 621 Order at ¶ 35.

¹⁹ CenturyLink Franchise § 2.6.

5. CenturyLink is legally, technically, and financially qualified to operate a cable communications system in the Service Territory and has complied with all application requirements.
6. The City has complied with all franchise application requirements imposed by State and federal law, including those identified herein or in the Franchise Report.
7. The terms and conditions of the CenturyLink Franchise pertaining to service area, a PEG access requirement, and franchise fees are not more favorable or less burdensome than the corollary terms of the Comcast Franchise.
8. The CenturyLink Franchise's initial deployment requirement of 15% within two years and 5-year timeline for substantially completing build-out provides a reasonable period of time for CenturyLink to become capable of reaching full deployment and is therefore consistent with both State and federal law.
9. The Ordinance Granting a Cable Communications Franchise for Qwest Broadband Services, Inc., d/b/a CenturyLink is formally and finally adopted.
10. The City finds and concludes that its actions are appropriate, reasonable, and consistent in all respects with the mandates set forth in Chapter 238 of Minnesota Statutes and applicable provisions of federal law, including 47 U.S.C. § 541(a).

PASSED AND ADOPTED in regular session of the City Council of the City of Richfield, Minnesota this _____ day of _____, 2016.

Mayor of the City of Richfield

ATTEST:

City Clerk



STAFF REPORT NO. 10
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Pam Dmytrenko, Assistant City Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich
1/6/2016

OTHER DEPARTMENT REVIEW: Mary Tietjen, City Attorney

CITY MANAGER REVIEW: Steven L. Devich
1/6/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of a resolution authorizing the implementation of Paid Parental Leave for benefit-eligible employees of the City of Richfield.

EXECUTIVE SUMMARY:

A new paid parental leave policy, for benefit-eligible City employees, became effective January 1, 2016. This benefit is an outcome of one of the 2015 City Council/Staff goals to employ a workforce for the economy of the future, acknowledging that work/life balance and the support of families is an important value of the City's and critical to recruiting and retaining a highly qualified and committed staff.

The paid parental leave benefit provides 100% of the employee's regular base wage, for regularly scheduled work hours, for up to 10 consecutive working days (or 80 hours). The benefit begins on the employee's first scheduled work day after the baby's birth or placement for adoption.

After the City Council discussed the draft policy at its September 8, 2015 work session, staff met and conferred with each of the City's collective bargaining units to determine if they wanted to enter into a Memorandum of Understanding (MOU) providing the same benefit to their members that was going to be provided to non-represented benefit-eligible employees. All of the City's four bargaining units agreed and have entered into MOU's with the City.

The City of Richfield is one of only a few cities offering paid parental leave to its benefit-eligible employees.

RECOMMENDED ACTION:

By motion: Approve the resolution authorizing the implementation of Paid Parental Leave for benefit-eligible employees of the City of Richfield.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

One of the City Council/Staff 2015 goals is to compete in the economy of the future by attracting and retaining a highly qualified and committed workforce. City benefits are a significant determining factor for employees when considering employment options. Moreover, the City of Richfield is committed to being innovative in its approach to recruiting and retaining employees.

To that end, as directed by the City Council, staff researched and drafted a Paid Parental Leave policy to be offered to all benefit-eligible City employees.

The main components of the policy include:

Purpose: To provide parents of all genders time to bond with newborn children or newly-adopted children in hopes of setting them up for long term health and wellbeing.

Eligibility: The policy applies to all eligible benefit-earning City employees who have been employed by the City for a minimum of one continuous year (12 months).

Benefit: Provides 100% of the employee's regular base wage (does not include overtime, supplemental pay, and/or other additional pay) for regularly scheduled work hours, for up to 10 consecutive working days (or 80 hours). Paid leave is available to both the birthing and non-birthing parents (regardless of gender). Paid leave begins on the employee's first scheduled work date after the baby's birth or placement for adoption.

This benefit supports employees and their families and acknowledges the importance of work/life integration. The City of Richfield is one of just a few cities that offers this type of benefit to its employees.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The Paid Parental Leave policy is a separate and distinct benefit from any other City benefit.

C. CRITICAL TIMING ISSUES:

The Paid Parental Leave benefit became effective on January 1, 2016. Any City of Richfield, benefit-eligible employee who becomes a parent in conjunction with a birth or adoption occurring on or after January 1, 2016, is eligible for this benefit.

D. FINANCIAL IMPACT:

It is estimated that 6-8 City employees will utilize this benefit annually, at an approximate cost of \$17,800 per year.

E. LEGAL CONSIDERATION:

The City Attorney has reviewed the Paid Parental Leave policy.

ALTERNATIVE RECOMMENDATION(S):

None

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
□ Resolution authorizing paid parental leave	Resolution Letter
□ Paid Parental Leave Policy	Backup Material

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING IMPLEMENTATION OF PAID PARENTAL LEAVE
FOR BENEFIT-ELIGIBLE EMPLOYEES OF THE CITY OF RICHFIELD**

WHEREAS, the Richfield City Council strongly believes in supporting its employees and their families and recognizes the importance of work/life integration; and

WHEREAS, an opportunity for the City Council to show such support is to provide paid parental leave to benefit-eligible employees; and

WHEREAS, such benefit allows new parents to spend time bonding with and caring for their newborn and newly-adopted children in hopes of setting children up for long term health and well-being; and

WHEREAS, the City Council believes such benefit is helpful in recruiting and retaining a highly qualified and committed workforce; and

WHEREAS, the City Council desires that the paid parental leave policy become effective on January 1, 2016.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Richfield that the City Council has authorized the City Manager to implement a paid parental leave policy for all benefit-eligible employees of the City of Richfield.

Adopted by the City Council of the City of Richfield, Minnesota this 12th day of January, 2016.

Debbie Goettel, Mayor

ATTEST:

Elizabeth VanHoose, City Clerk

PARENTAL LEAVE (PAID)

CITY OF RICHFIELD

PERSONNEL POLICY

DATE: January 1, 2016

SUBJECT: Paid Parental Leave Policy

Introduction

In recognition of the importance of family and work life integration, it is the policy of the City of Richfield to provide paid and unpaid parental leave benefits to benefit-earning employees due to the birth of an employee's child or the placement within an employee's home of an adopted child. This policy does not apply to foster parents.

Purpose

To provide parents of all genders time to bond with newborn children or newly-adopted children in hopes of setting children up for long term health and wellbeing.

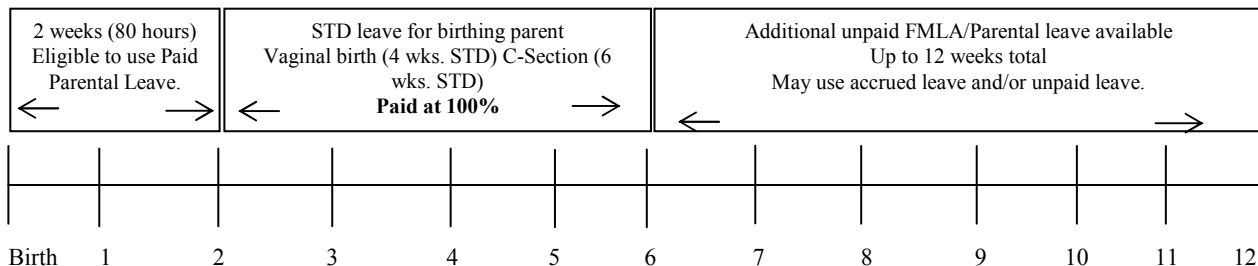
Policy

This policy applies to all eligible benefit-earning City employees who have been employed by the City and are benefit earning for a minimum of one continuous year (12 months). This policy is separate and distinct from any other City benefit.

Paid parental leave will be provided to regular benefit-earning employees (regardless of gender) who meet eligibility requirements, as described above, and who become biological or adoptive parents in conjunction with childbirth or adoptions occurring on or after January 1, 2016. Surrogate mothers and sperm or egg donors are excluded from coverage.

The paid parental leave benefit provides 100% of the employee's regular base wage (does not include overtime, supplemental pay, and/or other additional pay) for regularly scheduled work hours, for up to 10 consecutive working days (or 80 hours). The benefit begins on the employee's first scheduled work day after the baby's birth or placement for adoption (pro rata hours for regular part-time employees). Multiple births or adoptions (i.e. twins, triplets), medical conditions, and/or other circumstances will not increase the length of paid leave granted. For the purpose of this benefit, holidays will be counted as a regularly scheduled work day and will be included in the 10 work day (80 hours) count. Employer benefit contributions and leave accruals continue during paid parental leave. However, accruals shall not exceed contractual or ordinance maximums allowed for each respective leave. Paid parental leave will run concurrently with FMLA, MN Parental Leave and/or Short Term Disability and does not extend the length of these leaves or programs.

See the below illustration for a typical 12-week leave, due to the birth or adoption of a baby, with the use of paid parental leave:



Unpaid parental leave will also be provided to eligible employees in accordance with the MN Parental Leave Act. Unpaid parental leave must be taken within 12 months of a child's birth or adoption and eligible employees can choose when the leave will begin. The maximum amount of parental leave (including both paid and unpaid leave) is 12 weeks.

Eligible employees intending to use of paid parenting leave must submit a request form (attached) to Human Resources before the anticipated birth or adoption of the child and, preferably, with FMLA (and, if applicable, Short Term Disability insurance) paperwork. In no event will the combination of FMLA and parental leave exceed 12 weeks duration. The employee shall be returned to the position that the employee vacated at the commencement of leave or to a position of like status and pay.

Approved: /s/ Steven L. Devich

City Manager



RETURN FORM TO:

City of Richfield
Human Resources Office
6700 Portland Avenue
Richfield, MN 55423-2599
OR
FAX: 612/861-9715
Questions? Call 612/861-9704

TO BE COMPLETED BY EMPLOYEE

Required Form for City of Richfield Paid Parental Leave Policy

Name: _____

Dates of Leave: _____

I have read and understand the City of Richfield's Paid Parental Leave Policy and I have had the opportunity to ask Human Resources staff questions regarding this benefit. I agree to meet the requirements and conditions of the Policy.

Employee Signature

Date



STAFF REPORT NO. 11
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Jesse Swenson, Asst. HR Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich
1/4/2016

OTHER DEPARTMENT REVIEW: None

CITY MANAGER REVIEW: Steven L. Devich
1/4/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the resolution amending the 2015-2016 labor agreement with the International Union of Operating Engineers Local 49.

EXECUTIVE SUMMARY:

City staff has successfully completed labor negotiations with the International Union of Operating Engineers Local 49 which currently has 2-year agreement (2015-2016). Under the terms and conditions of the contract, insurance was to be reopened for 2016.

Subject to Council approval, the tentatively approved settlement with the Union provides health insurance benefits identical to those being provided to non-represented City employees resulting in an Employer increase of up to \$115 per month for medical coverage. Specifically, the provisions provide a maximum up to \$826.50 per month for Employee only coverage, \$1,135 per month for Employee plus spouse or Employee plus child(ren) coverage, and \$1,215 per month for Employee plus family coverage.

Additionally, the proposal increases the Employer contribution towards dental insurance to a maximum of \$59.00 per month for Employee single dental coverage.

RECOMMENDED ACTION:

By motion: Approve the resolution designating an increase in the City's contribution toward health and dental insurance premiums, effective January 1, 2016, for the International Union of Operating Engineers Local 49.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The International Union of Operating Engineers Local 49 bargaining unit has a two-year contract with the City for contract years 2015-2016. There is an insurance re-opener for 2016.

The Employer insurance contributions negotiated with the Union are identical to those being provided to the City's non-represented employees for 2016.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The City has met and negotiated in good faith with the union and its representative and is bound under the terms of the Public Employer's Labor Relations Act to meet and bargain over the terms and conditions of employment.
- The proposed settlement for the re-opener provision is identical in health and dental insurance provisions provided to non-union City employees. The City has a long history of providing the same level of health and dental insurance benefits to all eligible City employees.
- The health insurance increase is well within the range for other comparable bargaining groups in similar metro cities. The City has a long history of trying to remain as close to the middle as possible of the Stanton 5 cities in terms of wages and benefits.

C. CRITICAL TIMING ISSUES:

- In order to allow the City's accounting personnel the ability to modify payroll records in a timely manner for 2016 benefits, it is recommended that the City Council act on January 12, 2016 to adopt the attached resolution providing for contract changes. The health and dental insurance benefits are effective January 1, 2016.

D. FINANCIAL IMPACT:

- Up to a maximum \$115 per month increase in the City's contribution towards the employee's health insurance coverage.
- Up to a maximum \$0.50 per month increase in the City's contribution towards single dental insurance coverage.

E. LEGAL CONSIDERATION:

- If the terms of this agreement are not approved, further negotiation and/or mediation will be necessary.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve the terms of this agreement and prepare for further negotiation and/or mediation.
- Defer discussion to another date.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
□ Resolution	Resolution Letter

RESOLUTION NO.

RESOLUTION DESIGNATING CITY'S CONTRIBUTION TOWARDS HEALTH AND DENTAL INSURANCE PREMIUMS FOR EMPLOYEES COVERED BY THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 49

WHEREAS, the City of Richfield and International Union of Operating Engineers Local 49 signed a bargaining agreement covering a two year period from January 1, 2015 through December 31, 2016; and

WHEREAS, the labor agreement covers all terms and conditions of employment including the City contribution for insurance benefits; and

WHEREAS, Article 36 of the labor agreement provides for either party to amend the provisions in Article 26, Insurance; and

WHEREAS, the City has historically provided the same salary increase and level of health insurance contribution to all eligible City employees, both union and non-union; and

WHEREAS, the City Ordinance requires that contracts between the City and the exclusive representative of the employees in an appropriate bargaining unit shall be completed by Council resolution.

WHEREAS, the City Council is required to determine, by resolution, the City's contribution toward the premium for employee group insurance coverage.

NOW, THEREFORE, BE IT RESOLVED that the City shall contribute a maximum of \$826.50 per month for employee only health insurance coverage, \$1,135 per month for employee plus spouse or employee plus child(ren) health insurance coverage, and \$1,215 per month for family health insurance. Such contributions shall be for coverage effective January 1, 2016; and

BE IT FURTHER RESOLVED that the City shall contribute a maximum of \$59.00 per month for employee single dental insurance. Such contribution shall be for coverage effective January 1, 2016.

Adopted by the City Council of the City of Richfield, Minnesota this 12th day of January 2016.

Debbie Goettel

Mayor

ATTEST:

Elizabeth VanHoose

City Clerk



STAFF REPORT NO. 12
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Jesse Swenson, Asst. HR Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich
1/4/2016

OTHER DEPARTMENT REVIEW: None

CITY MANAGER REVIEW: Steven L. Devich
1/4/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of a resolution approving the contract with the Police Supervisors LELS Local 162 for the contract period January 1, 2016 through December 31, 2017 and authorize the City Manager to execute the agreement.

EXECUTIVE SUMMARY:

City staff has completed labor negotiations with the Police Supervisors LELS Local 162 (Union). The provisions of the 2016-2017 labor agreement cover all of the employees in this Union which consists of 11 positions: 9 Sergeants and 2 Lieutenants.

The two-year contract provides a wage adjustment of 2.5% in 2016 and a wage adjustment of 2.75% in 2017. It also includes an equity adjustment for both Lieutenants and Sergeants in order to bring their wages more in line with other similarly-sized metro area cities. This was done after a thorough analysis of metro wages by staff.

The other provisions of the tentative agreement include:

- Up to a \$115 per month increase in the City's contribution towards health insurance, and
- A \$0.50 per month increase towards Employee single dental coverage. There is a reopener provision for insurance for 2017.
- An increase in clothing allowance of \$20 in 2016 and an additional \$20 in 2017.

RECOMMENDED ACTION:

By Motion: Adopt the resolution approving the provisions of the 2016-2017 labor agreement with the Police Supervisors LELS Local 162 bargaining unit and authorize the City Manager to execute the agreement.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The tentatively approved two year contract settlement includes the following significant changes:

- Wages: A 2.5% wage adjustment for 2016 and a 2.75% wage adjustment for 2017.
- Equity Adjustment: An equity adjustment was provided to this bargaining unit because metro wage surveys indicated that this employee group falls below the metro average wage for both lieutenant

and sergeant positions. The equity adjustment brings the group closer to the average at the end of 2017.

The lieutenants receive an additional \$40 to their base monthly wage for 2016 and another additional \$10 to their base monthly wage in 2017.

The sergeants received an additional \$20 to their base monthly wage for 2016 and another \$10 to their base monthly wage in 2017.

- Health Insurance: Up to a \$115 increase to the Employer health insurance contribution, which provides up to a maximum contribution of \$826.50 per month for single Employee coverage, \$1,135 per month for Employee plus spouse or Employee plus child(ren) coverage and \$1,215 per month for Employee plus family coverage.
- Dental Insurance: A \$0.50 per month increase to the Employer contribution for Employee single dental insurance coverage at \$59.00 per month.
- Clothing allowance increase of \$20 in 2016 to \$915 and an additional \$20 in 2017 to \$935.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The City has met and negotiated in good faith with the Union and its representatives and is bound under the Public Employer's Labor Relations Act to meet and bargain over the terms and conditions of employment.
- The proposed settlement for the health and dental insurance provisions is identical to those provided to both union and non-union City employees. The City has a long history of providing the same level of insurance benefits to all eligible City employees.
- The 2.5% wage increase represents the same 2.5% wage adjustment implemented for non-union City employees and all other contracts settled for 2016.
- The 2.5% wage adjustment and health insurance increase is comparable to other bargaining groups in similar metro cities. A survey of Stanton 5 cities indicates that those cities are providing anywhere from a 1.5 to 3 percent increase. The City has a long history of trying to remain as close to the mid-range as possible for Stanton 5 cities, in terms of wages and benefits.
-
- The 2.75% wage adjustment for 2017 is the City's and Union's best estimation of what will be the average of such settlements in the metro area. The LELS Local 123 has also agreed to this increase for 2017. The City is aware of at least one other metro area city that has settled at 2.75% for 2017.

C. CRITICAL TIMING ISSUES:

- In order to allow the City's accounting personnel to modify payroll records in a timely manner for 2016 wages and benefits, it is recommended that the City Council act on January 12, 2016 to adopt the attached resolution providing for contract changes, effective January 1, 2016.

D. FINANCIAL IMPACT:

- A 2.5% wage increase for contract year 2016 and 2.75% wage increase for contract year 2017.
- An equity adjustment for lieutenants of a \$40 increase to the base monthly wage in 2016 and a \$10 increase to the base monthly wage in 2017. An equity adjustment for sergeants of a \$20 increase to the base monthly wage in 2016 and a \$10 increase to the base monthly wage in 2017. For 2 full-time lieutenants, these adjustments represent a total cost of \$1,200, and for 9 full-time sergeants the adjustments represent a total cost of \$3,240.
- A maximum \$115 per month increase in Employer monthly contributions towards health insurance coverage for 2016.
- A \$0.50 per month increase in Employer monthly contributions towards dental insurance in 2016.
- A \$20 increase to clothing allowance in 2016 and an additional \$20 increase to clothing allowance in 2017.

E. LEGAL CONSIDERATION:

- If the terms of this agreement are not approved, further negotiation and/or mediation will be necessary.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve the terms of this agreement and prepare for further negotiation and/or mediation.
- Defer discussion to another date.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Police Supervisor Resolution	Resolution Letter

RESOLUTION NO.

**RESOLUTION APPROVING LABOR AGREEMENT BETWEEN THE
CITY OF RICHFIELD AND
LAW ENFORCEMENT LABOR SERVICES (LELS), LOCAL 162
BARGAINING UNIT FOR YEARS 2016 - 2017**

WHEREAS, the City Manager and the Richfield Police Supervisors LELS Local 162 have reached an understanding concerning conditions of employment for years 2016 and 2017; and

WHEREAS, it would be inappropriate to penalize LELS Local 162 members who have negotiated in good faith; and

WHEREAS, the City Ordinance requires that contracts between the City and the exclusive representative of the employees in an appropriate bargaining unit shall be completed by Council resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the Labor Agreement between the City of Richfield and LELS Local 162 Bargaining Unit for years 2016 and 2017, under the provisions of the Labor Agreement to be implemented, effective January 1, 2016 and authorize the City Manager to execute the contract.

Adopted by the City Council of the City of Richfield, Minnesota this 12th day of January 2016.

Debbie Goettel

Mayor

ATTEST:

Elizabeth VanHoose

City Clerk



STAFF REPORT NO. 13
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Jesse Swenson, Asst. HR Manager

DEPARTMENT DIRECTOR REVIEW: Steven L. Devich
1/4/2016

OTHER DEPARTMENT REVIEW: None

CITY MANAGER REVIEW: Steven L. Devich
1/4/2016

ITEM FOR COUNCIL CONSIDERATION:

Consideration of a resolution approving the contract with the Police Officers and Detectives LELS Local 123 for the contract period January 1, 2016 through December 31, 2017 and authorize the City Manager to execute the agreement.

EXECUTIVE SUMMARY:

City staff has completed labor negotiations with the Police Officers and Detectives LELS Local 123 (Union). The provisions of the 2016-2017 labor agreement cover all of the employees in this Union which consists of 31 positions.

The two-year contract provides a wage adjustment of 2.5% in 2016 and a wage adjustment of 2.75% in 2017. It also includes an equity adjustment to the top tier of the police officer pay grade, in both contract years, in order to bring their wages more in line with other similarly-sized metro area cities. This was done after a thorough analysis of metro wages by staff.

The other provisions of the tentative agreement include:

- Up to a \$115 per month increase in the City's contribution towards health insurance, and
- A \$0.50 per month increase towards Employee single dental coverage. There is a reopener provision for insurance for 2017.
- An increase to assignment pay in 2016 for the Detective Trainee to \$200 per month, and an increase to the Detective Trainee, Special Investigative Unit, and the Hennepin County Violent Offender Task Force Unit assignments to \$250 per month in 2017.

RECOMMENDED ACTION:

By Motion: Adopt the resolution approving the provisions of the 2016-2017 labor agreement with the Police Officers and Detectives LELS Local 123 bargaining unit and authorize the City Manager to execute the agreement.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The tentatively approved two year contract settlement includes the following significant changes:

- Wages: A 2.5% wage adjustment for 2016 and a 2.75% wage adjustment for 2017.

- Equity Adjustment: An equity adjustment was provided to the top step of the Police Officer pay grade because metro wage surveys indicated that this employee group falls below the metro average top police officer wage. The equity adjustment brings the group closer to the average at the end of 2017.
The top police officer pay step will receive an additional \$40 to their base monthly wage for 2016 and another additional \$10 to their base monthly wage in 2017.
- Special assignment pay for the Detective Trainee assignment will increase to \$200 in 2016. The Detective Trainee, Special Investigative Unit, and Hennepin County Violent Offender Task Force Unit assignments will be increased to \$250 per month in 2017.
- Health Insurance: Up to a \$115 increase to the Employer health insurance contribution, which provides up to a maximum contribution of \$826.50 per month for single Employee coverage, \$1,135 per month for Employee plus spouse or Employee plus child(ren) coverage and \$1,215 per month for Employee plus family coverage.
- Dental Insurance: A \$0.50 per month increase to the Employer contribution for Employee single dental insurance coverage at \$59.00 per month.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The City has met and negotiated in good faith with the Union and its representatives and is bound under the Public Employer's Labor Relations Act to meet and bargain over the terms and conditions of employment.
- The proposed settlement for the health and dental insurance provisions is identical to those provided to both union and non-union City employees. The City has a long history of providing the same level of insurance benefits to all eligible City employees.
- The 2.5% wage increase represents the same 2.5% wage adjustment implemented for non-union City employees and all other contracts settled for 2016.
- The 2.5% wage adjustment and health insurance increase is comparable to other bargaining groups in similar metro cities. A survey of Stanton 5 cities indicates that those cities are providing anywhere from a 1.5 to 3 percent increase. The City has a long history of trying to remain as close to the mid-range as possible for Stanton 5 cities, in terms of wages and benefits.
- The 2.75% wage adjustment for 2017 is the City's and Union's best estimation of what will be the average of such settlements in the metro area. The LELS Local 162 has also agreed to this increase for 2017. The City is aware of at least one other metro area city that has settled at 2.75% for 2017.

C. CRITICAL TIMING ISSUES:

- In order to allow the City's accounting personnel to modify payroll records in a timely manner for 2016 wages and benefits, it is recommended that the City Council act on January 12, 2016 to adopt the attached resolution providing for contract changes, effective January 1, 2016.

D. FINANCIAL IMPACT:

- A 2.5% wage increase for contract year 2016 and 2.75% wage increase for contract year 2017.
- An equity adjustment for the top step of the police officer pay grade of a \$40 increase to the base monthly wage in 2016 and a \$10 increase to the base monthly wage in 2017.
- An increase to the Detective Trainee assignment from \$100 to \$200 in 2016 will result in a potential net financial impact of \$3,600. An increase to the Detective Trainee, Special Investigative Unit, and Hennepin County Violent Offender Task Force special assignment pay to \$250 in 2017 will result in a potential net financial impact of \$1,800.
- A maximum \$115 per month increase in Employer monthly contributions towards health insurance coverage for 2016.
- A \$0.50 per month increase in Employer monthly contributions towards dental insurance in 2016.

E. LEGAL CONSIDERATION:

- If the terms of this agreement are not approved, further negotiation and/or mediation will be necessary.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve the terms of this agreement and prepare for further negotiation and/or mediation.
- Defer discussion to another date.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Police Officer Resolution	Resolution Letter

RESOLUTION NO.

**RESOLUTION APPROVING LABOR AGREEMENT BETWEEN THE
CITY OF RICHFIELD AND
LAW ENFORCEMENT LABOR SERVICES (LELS), LOCAL 123
BARGAINING UNIT FOR THE YEARS 2016 AND 2017**

WHEREAS, the City Manager and the Richfield Police Officers and Detectives LELS Local 123 have reached an understanding concerning conditions of employment for years 2016 and 2017; and

WHEREAS, it would be inappropriate to penalize LELS Local 123 members who have negotiated in good faith; and

WHEREAS, the City Ordinance requires that contracts between the City and the exclusive representative of the employees in an appropriate bargaining unit shall be completed by Council resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the Labor Agreement between the City of Richfield and LELS Local 123 Bargaining Unit for years 2016 and 2017, under the provisions of the Labor Agreement to be implemented, effective January 1, 2016 and authorize the City Manager to execute the contract.

Adopted by the City Council of the City of Richfield, Minnesota this 12th day of January 2016.

Debbie Goettel Mayor

ATTEST:

Elizabeth VanHoose City Clerk



STAFF REPORT NO. 14
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Theresa Schyma, Deputy City Clerk

DEPARTMENT DIRECTOR REVIEW: N/A

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich
12/30/2015

ITEM FOR COUNCIL CONSIDERATION:

Discussion regarding City Council attendance at the 2016 National League of Cities (NLC) Conferences.

EXECUTIVE SUMMARY:

According to State Statute 471.66, the governing body of cities and school districts must adopt a policy that controls out-of-state travel for elected officials. That policy was adopted by the City Council in November 2005 and stipulates that the City Council must approve, in advance by a motion, attendance at out-of-state conferences.

Information regarding the 2016 conferences is available on their website: www.nlc.org.

RECOMMENDED ACTION:

By Motion: Designate Council Member(s) to attend the March 5-9, 2016 NLC Congressional City Conference in Washington, D.C. and the November 16-19, 2016 NLC City Summit (formerly Congress of Cities) in Pittsburgh, PA.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The City Council has determined that attendance at the NLC conferences is beneficial to the City's operations and long-range planning efforts.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

This information is contained in the Executive Summary.

C. CRITICAL TIMING ISSUES:

It is critical that the City Council remains in the informational loop regarding congressional activities as it relates to federal funds and homeland security issues.

D. FINANCIAL IMPACT:

Funds for the City Council to attend the NLC conference(s) are included in the City's 2016 budget.

E. LEGAL CONSIDERATION:

None.

ALTERNATIVE RECOMMENDATION(S):

- The City Council may want to address this designation prior to each conference.
- The City Council may decline to send delegates.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A

ATTACHMENTS:

Description	Type
□ 2014-16 conference attendance	Backup Material

**COUNCIL MEMBER ATTENDANCE AT NATIONAL CONFERENCES
2014 - 2016**

CONFERENCE	DATE	LOCATION	ATTENDEES	COST
	2014			
NLC Congressional City	March 8-12	Washington, DC	Goettel Garcia	\$2911
NLC Congress of Cities	Nov.18-22	Austin, TX	Goettel	\$2000
	2015			
NLC Congressional City	March 3-7	Washington, DC	Goettel	
NLC Congress of Cities	Nov.4-7	Nashville, TN	Goettel	
	2016			
NLC Congressional City	March 5-9	Washington, DC		
NLC City Summit (formerly Congress of Cities)	Nov.16-19	Pittsburgh, PA		



STAFF REPORT NO. 15
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Theresa Schyma, Deputy City Clerk

DEPARTMENT DIRECTOR REVIEW: N/A

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich
12/30/2015

ITEM FOR COUNCIL CONSIDERATION:

Consideration of designating representatives to serve as the 2016 liaisons to various metropolitan agencies and City commissions.

EXECUTIVE SUMMARY:

Members of the City Council serve as the City's representatives on various metropolitan agencies and City commissions. Each year, the City Council appoints these representatives.

RECOMMENDED ACTION:

By Motion: Designate City Council liaison appointments to various metropolitan agencies and City commissions for 2016.

BASIS OF RECOMMENDATION:

A. **HISTORICAL CONTEXT**

This information is contained in the Executive Summary.

B. **POLICIES (resolutions, ordinances, regulations, statutes, etc):**

The City Council considers the designation of liaisons at the first meeting in January of each year.

C. **CRITICAL TIMING ISSUES:**

The City needs representation on metropolitan agencies and commissions.

D. **FINANCIAL IMPACT:**

These designations are at no additional cost to the City.

E. **LEGAL CONSIDERATION:**

None.

ALTERNATIVE RECOMMENDATION(S):

The City Council could defer the designations to a future City Council meeting.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A

ATTACHMENTS:

Description	Type
 Liaison appointment list	Backup Material

<u>AGENCY</u>	<u>2015 LIAISON</u>	<u>2016 LIAISON</u>
METRO CITIES	DEBBIE GOETTEL, REP. PAT ELLIOTT; EDWINA GARCIA; TOM FITZHENRY; MICHAEL HOWARD, ALTS.	
LEAGUE OF MINNESOTA CITIES	DEBBIE GOETTEL, REP. MICHAEL HOWARD, ALT.	
NOISE OVERSIGHT COMMITTEE	TOM FITZHENRY, REP. MICHAEL HOWARD, ALT. PAM DMYTRENKO, ALT.	
TRANSPORTATION COMMISSION	MICHAEL HOWARD, LIA. TOM FITZHENRY, ALT.	
I-35W SOLUTIONS ALLIANCE	EDWINA GARCIA, LIA. PAT ELLIOTT, ALT. MIKE EASTLING, STAFF LIA.	
494 CORRIDOR COMMISSION	DEBBIE GOETTEL, LIA. PAT ELLIOTT, ALT. JEFF PEARSON, STAFF LIA.	
MCWD/NMCWD	DEBBIE GOETTEL PAT ELLIOTT	
PLANNING COMMISSION	PAT ELLIOTT, LIA. DEBBIE GOETTEL, ALT.	
COMM. SERVICES COMMISSION	EDWINA GARCIA, LIA. PAT ELLIOTT, ALT.	
ADVISORY BOARD OF HEALTH	DEBBIE GOETTEL, LIA. TOM FITZHENRY, ALT.	
HUMAN RIGHTS COMMISSION	MICHAEL HOWARD, LIA. PAT ELLIOTT, ALT.	
FRIENDSHIP CITY COMMISSION	DEBBIE GOETTEL, LIA. PAT ELLIOTT, ALT.	
ARTS COMMISSION	DEBBIE GOETTEL, LIA. MICHAEL HOWARD, ALT.	
CIVIL SERVICE COMMISSION	TOM FITZHENRY, REP.	
RICHFIELD COMMUNITY HUMAN SERVICES PLANNING COUNCIL	EDWINA GARCIA, REP. DEBBIE GOETTEL, ALT.	
FOWL BOARD	EDWINA GARCIA,, REP. DEBBIE GOETTEL, ALT.	

SOUTHWEST CABLE COMMISSION	PAT ELLIOTT, REP. STEVE DEVICH, REP. DEBBIE GOETTEL, ALT.
RICHFIELD HISTORICAL SOCIETY	DEBBIE GOETTEL, REP. PAT ELLIOTT, ALT.
RICHFIELD SCHOOL DISTRICT	MICHAEL HOWARD, REP. PAT ELLIOTT, ALT.
BAND SHELL TASK FORCE	EDWINA GARCIA, REP. DEBBIE GOETTEL, ALT.
BEYOND THE YELLOW RIBBON	TOM FITZHENRY, REP.



STAFF REPORT NO. 16
CITY COUNCIL MEETING
1/12/2016

REPORT PREPARED BY: Theresa Schyma, Deputy City Clerk

DEPARTMENT DIRECTOR REVIEW: N/A

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich
12/30/2015

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the designation of a Mayor Pro Tempore for 2016.

EXECUTIVE SUMMARY:

The City Charter states it is necessary to designate a City Council Member to serve as the Mayor Pro Tempore for those times when the Mayor is absent from the City.

City Council Member Edwina Garcia served a Mayor Pro Tempore in 2015.

RECOMMENDED ACTION:

By Motion: City Council designation of a Mayor Pro Tempore for 2016.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

This information is contained in the Executive Summary.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The City Council typically considers the designation of a Mayor Pro Tempore at the first meeting in January of each year.
- Section 2.06. The Mayor. Subdivision 1, of the City Charter states: "The Mayor shall be the presiding officer of the Council, except that the Council shall choose from its members a president pro temp who shall hold office at the pleasure of the Council and shall serve as president in the Mayor's absence and as Mayor in case of the Mayor's disability or absence from the City."

C. CRITICAL TIMING ISSUES:

It is necessary to designate a Mayor Pro Tempore to ensure continuation of City operations during an absence of the Mayor.

D. FINANCIAL IMPACT:

This designation is at no additional cost to the City.

E. LEGAL CONSIDERATION:

None.

ALTERNATIVE RECOMMENDATION(S):

The City Council could defer the designation to a future City Council meeting.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A